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In the Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

AMERICAN LIBRARY ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOINT APPENDIX
(VOLUME 2)

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[TESTIMONY OF J. BERTMAN]

[Mar. 26, 2002]
[pp. 309-323]

* * * * *

[DIRECT EXAMINATION]

BY MR. BANKSTON:

Q Good afternoon, Dr. Bertman.

A Hi.

Q Could you briefly tell us about your educational background after high school?

A I have a B.A. from Vassar College and an M.D. from University of Massachusetts Medical School.

Q When did you graduate from medical school?

A 1993.

Q How are you currently employed?

A I'm a family practice physician in rural Rhode Island, I'm a clinical assistant professor of family medicine at Brown University, and I'm the president and medical director of afraidtoask.com.

JUDGE FULLAM: Could you be all these things a little closer to the microphone and a little louder, please?

THE WITNESS: I'm sorry, Your Honor.

JUDGE FULLAM: Thank you.

MR. BANKSTON: Do you need him to repeat the last answer?

JUDGE FULLAM: I'm afraid I did, yes.

THE WITNESS: I'm—

JUDGE FULLAM: I heard it, I said.

THE WITNESS: Oh, you heard it?

JUDGE FULLAM: Yes.

BY MR. BANKSTON:

Q Okay. And what is published on the afraidtoask.com web site?

A This is medical information, detailed information, and photographs on topics that many of us are uncomfortable discussing with parents, friends, even physicians.

Q And what motivated you to start such a site?

A A friend of mine, while I was in residency, asked if I could research what the normal male genitalia size is, and I looked into this and found that, in fact, there had been a number of clinical studies on this topic.

I realized this would be a good opportunity to spread a safe sex message and that really started the site.

Q Perhaps you could explain how the size of a man's genitalia is a health question or issue?

A Well, I think that many of us feel uncomfortable with our anatomy and physiology and want to know are

we normal, are these things on us, are these physiologic responses we have normal, and that's really the purpose of this.

Q Okay, afraidtoask.com, where is that based?

A Saunderstown, Rhode Island, out of my home.

Q And is there a staff for the web site?

A No, it's pretty much just me. A friend of mine, the same friend helps with PR and my sister does all the graphic design work.

JUDGE BECKER: You're a practicing physician?

THE WITNESS: Right.

JUDGE BECKER: A family practitioner?

THE WITNESS: Correct.

JUDGE BARTLE: You're affiliated with Brown University?

THE WITNESS: Right. I teach residents and medical students.

JUDGE BARTLE: Thank you.

THE WITNESS: They come to my office or I go to the residency at Brown.

BY MR. BANKSTON:

Q Is afraidtoask.com for profit?

A In theory. In practice, over the last six years, we've made a profit of $4,000.

Q Do you charge internet users to view the information on your site?

A People come to the site. They can have access to mostly the entire site for free. We do—we have added a fee-for-service where they can ask a specific question to a physician, usually myself.

Q But content posted to the site?

A Is all free.

Q Okay. Are there any other ways that you generate revenue?

A We receive some donations through the web site.

JUDGE FULLAM: Do you get any advertising out of there?

THE WITNESS: Right. Yes, sorry. That's the main revenue source. Recently we've started posting banner advertisements on our web pages. The more traffic we get, the more banners we show, and that's really the reason why over the last year we were able to turn a profit.

BY MR. BANKSTON:

Q Are you able to track the amount of traffic you have for that purpose?

A Yes.

Q And how is the traffic on your site?

A In February we had—

JUDGE BARTLE: Of this year?

THE WITNESS: Of this year, last month. We had 1.5 million pages looked at by 300,000 visitors.

BY MR. BANKSTON:

Q The traffic information that you have, are you able to see where users are linking from to get to your site?

A Yes. We're able to see what pages they've come from from other sites that are linking to us in general.

Q And do any of those users ever come from anonymizer sites as discussed earlier today?

A Yes, they do.

Q How would you characterize that, is that often or rarely?

A I would say regularly, significantly.

Q I'm sorry, afraidtoask.com is a plaintiff in this case, correct?

A Correct.

Q What is the target audience for your site, afraidtoask?

A Well, the site really anyone can look at it, and I think people of all ages do. Generally it's teens and young adults who are really coming to the site.

Q Do teenagers visit the site?

A They do regularly.

Q How do you know that?

A We have surveys on each of our guides where people can report their age and where they can give us recommendations about other guides or changes to our guides. So we have data from those surveys.

Q And that data is?

A That data shows that 25 percent of people are under 18, 25 percent are 18 to 24.

Q Okay. I would like to direct you to a document numbered as Exhibit 110 in the black binder in front of you.

MR. BANKSTON: Your Honors, for your convenience, we will be looking at Exhibits 110 through 114 in volume 1 of the Multnomah plaintiffs' exhibits. We will be looking at those sequentially.

BY MR. BANKSTON:

Q Can you identify what's on the item marked as Exhibit 110?

A Yes. This is a screen shot of the front page of our web site.

Q And could you describe what's on that page?

A This has most of our major topics, including sexually transmitted diseases, male and female genitalia, information on birth control, skin cancer, bowel movements, hair and hair loss, those sorts of things.

Q Moving on to what's marked as Exhibit 111, can you identify that?

A This is the front page of our bulletin board.

Q Can you please tell us what a bulletin board is?

A A bulletin board is a place where individuals can post questions and then other individuals can post responses.

Q And looking at 110 and 111, are those accurate representations for what a user would see if they were visiting your site?

A Yes.

Q Can you try and describe the typical discussion on your bulletin board?

A The discussions really vary widely. Some examples would be somebody posted a question that they had been raped on vacation and they weren't sure where to turn. Plenty of people ask, is my body, my anatomy normal, and questions about rashes. Really everything.

Q And do you respond to those queries or do other users respond to those?

A Generally other users respond. I do certainly respond to some. I'm constantly looking through the board, but this is a place where the community of people accessing afraidtoask really can interact with each other and get each other's views.

JUDGE FULLAM: Is there any way to check the reliability of the views expressed by these people?

THE WITNESS: No.

BY MR. BANKSTON:

Q When using the bulletin board, are users given the option of personally identifying themselves?

A They can. The vast majority do not.

Q Then how do they refer to themselves?

A They refer to themselves with user names or pseudonyms. It's very rare that I see an actual name. In some instances, I've even removed actual names.

My point in this is allowing people to really get across their views but not sort of post identifying information, although some decide to do that.

Q Why did you choose to put this feature on your web site?

A Well, this was—initially this was a commercial decision to try and bring users back to the web site and try and increase traffic. Over time, it really has become a major aspect of our site with—and I think serves a very important purpose.

JUDGE BARTLE: Are there any visual depictions on your web site or is it all just words and commentary?

THE WITNESS: No, there are very visual depictions.

MR. BANKSTON: We were just about to move to those exhibits.

JUDGE FULLAM: Unfortunately they're coming up.

BY MR. BANKSTON:

Q If you would please turn to Exhibit 112.

JUDGE BARTLE: You're ahead of it.

BY MR. BANKSTON:

Q Could you tell us what we're looking at?

A This is a page from the female genitalia guide that describes the vulva and the internal genitalia.

Q And what's on the page?

A A photograph—actually this is a cadaver photographer of a woman's vagina with a description of the anatomy.

Q Moving on to 113, could you please tell us what's pictured there?

A This is one of the pages from the male genitalia guide that shows a number of different erections as well as text about erections.

Q And finally 114, could you please tell us what is in that document?

A This is a page from another guide, our breast guide, that discusses how bra sizes are classically measured and shows photographs of various breasts of different sizes, shapes and colors.

Q And looking at those three exhibits, 112 through 114, are those accurate representations of what a user would see if they visited your site?

A Yes.

Q Okay. There are many on these pages that you've noted. Have you seen many photographs like that on other health sites?

A I really have not. The big web sites, like drkoop.com, webmd, really try and describe this information in text format and don't include the photographs.

Q Why do you—I'm sorry.

MS. BHATTACHARYYA: Your Honor, I'm going to object to this as lacking a foundation.

JUDGE FULLAM: Well, he certainly wouldn't say that if he hadn't looked at it.

JUDGE BARTLE: Have you seen them?

THE WITNESS: Absolutely.

MS. BHATTACHARYYA: But he hasn't testified as to how many he's looked at. He made a general—

JUDGE BARTLE: Well, he just mentioned several that he's —

JUDGE FULLAM: Okay. If that's an objection, it's overruled.

JUDGE BECKER: Go ahead.

BY MR. BANKSTON:

Q Without such pictures on other health sites, why have you chosen to publish them?

A I think really a picture is worth a thousand words, and I think to show pictures of breasts that are asymmetrical as we see in 114, or some with different degrees of nipple hair, things which I think many people are questioning about their own bodies, really gets across the information in much more detail than a description in text could.

Q Looking at Exhibits 113 and 114, you've used numerous photos. Why have you chosen to do that instead of using one or two?

A There really is a wide range of normal, and that's what we're trying to get across here, that erections come in all shapes and sizes and colors and so we tried to give an example of those.

Q Dr. Bertman, do you know what filtering or blocking software is?

A Yes.

Q Do you know if your site has ever been blocked by such software before?

A We have been blocked.

Q How do you know that?

A Mostly from personal experience. As I was doing this site and it was growing, I was proud of it and I wanted to show friends. And I tried on a number of friends' computers, showing them the software, and found that it had been blocked.

Net Nanny was one of them that I recall now as being one that blocked. When the case was initially

started a number of months ago, I went to see if we were blocked and at that time found as well that we were blocked. And finally, just last week, wondering if I had been unblocked because we were a plaintiff in this suite, I went to N2H2 as well as Cyber Patrol and found, in fact, the site was still blocked.

Q I'm sorry, blocked as what?

A When I—well, on N2H2 we were blocked as sex, nudity and medical. Those were the topics.

On Cyber Patrol, we were on their cyber not list, and I don't know exactly what—it didn't state what categories were there.

Now, I should just say, I put in the URL, including skin cancer, that was blocked as well. It's not just some pages.

JUDGE FULLAM: Did you ever make any attempt to have them unblock it?

THE WITNESS: Last week—there's an option there to send a URL so they can review it. I did that. I mean, there are so many of these companies to try and start mailing each of them and trying, hopefully that they'll unblock me.

JUDGE FULLAM: Until last week, you hadn't made any effort?

THE WITNESS: I can't tell you exactly when. I honestly have tried, I just don't exactly when.

BY MR. BANKSTON:

Q Have any blocking software companies ever notified you that you were being blocked?

A No.

Q Have any blocking software companies contacted you for any reason?

A No.

Q Do you expect that you will continue to be blocked by such software?

A I do. That's why I'm here.

Q Why do you believe that?

A I think by the nature of our site, these topics are sensitive and personal and show things that I think blocking software wants to block. That's my opinion.

Q Are you familiar with the Children's Internet Protect Act, the Act being challenged here today?

A Yes.

Q Have you read it?

A Yes.

Q How, if at all, will the Children's Internet Protection Act, if put into effect, affect the traffic on your site?

A I can't give you an actual number. I know that traffic will probably decrease as a result of being

blocked, and hence, revenue probably will decrease as well.

Q Are you familiar with the provision of the Children's Internet Protection Act that allows for the disabling of blocking software for bona fide research?

A Yes.

Q Or other lawful purposes?

A Hm-hmm.

Q And do those disabling provisions solve your problems with the Act?

A No, they don't.

Q And why is that?

A Well, I think that if a 14-year-old is concerned about whether a rash they have may be—

MS. BHATTACHARYYA: Objection, Your Honors, speculation.

JUDGE FULLAM: It is speculation that is almost self-evident I guess to what he's going to say. Go ahead.

MR. BANKSTON: May he continue?

JUDGE BECKER: I permit it, overruled.

THE WITNESS: If a 14-year-old is concerned about a rash being possibly herpes, I think it's unlikely they'll be comfortable approaching a librarian and asking them to unblock a site so they can look at pictures of herpes.

I also think that some librarians would be uncomfortable unblocking such a site as this, and—I mean, those are the main reasons.

BY MR. BANKSTON:

Q Has a court of law in any jurisdiction ever found any material on your site to be obscene, child pornography or harmful to minors material?

A Absolutely not.

MR. BANKSTON: I have no further questions at this time.

JUDGE BECKER: Cross-examine.

* * * * *

[TESTIMONY OF D. BIEK]

[Mar. 28, 2002]

[pp. 63-65]

* * * * *

Q The next Exhibit 22A is an example of a printout from the CD ROM that we've also provided to the Court.

Mr. Biek, is this the type of log that you looked at?

A It's the type of log I look at, but it's not the exact appearance of the log. As I see it, it's printed as two columns in a smaller type face arranged on a single sheet.

Q So it's the same information but a different format?

A That's correct.

Q Would you walk us through just the first entry on the first page and tell us what information you can glean from that entry?

A The first entry begins with the expression, "IC0222," which is a particular terminal at a particular branch library. We have the date, 2000/9/27. The next is the time of day that the internet session started in which this intercept occurred, in other words, the user signed on 39 minutes after 4:00.

The next timed expression four minutes after 5:00 p.m. is the time of day when this particular filter intercept was encountered. The next field if a time measure that we don't implement. There follows a list of probably 25 or so digits. This is information that is gleaned from the library card record that the user signed in from.

It's a non-identifying demographic information coded for gender, for year of birth for sensus tract of residents for a branch library where the library card was issued, all data that we've in the past to analyze the patterns of circulation of library materials.

The final four digits of this—

JUDGE BECKER: It doesn't tell you who the person was?

THE WITNESS: It does not identify the person. It does not include the library card number of the person.

JUDGE BARTLE: All visual depictions I take it?

THE WITNESS: These are all web sites that were flagged by the Cyber Patrol—

JUDGE BARTLE: Cyber Patrol so they cold include text.

THE WITNESS: That's correct.

The final four digits of this very long expression that you see, 1988 is the year of birth of the user in this case. There's a string of digits then that codes for I believe it's the expiration date of the users library card. We validate library cards once a year to make sure our information is current. Then comes the expression blocked. That indicates that this is a Cyber Patrol or that the intercept originated with the Cyber Patrol software.

The third line beginning http, is the web site address that the person attempted to reach. In this case it was a Yahoo search. Yahoo is a general purpose web directory and search engine. Included within the search terms or the entire URL here, the entire third line are the expression pinkpussy, those were the search terms that were used by the library user in this case.

Then comes the URL itself that was the result of that search. In other words the user would have typed in those search terms, gotten a list of results, clicked on a particular item on that list. That happened to be www.shavedpink.holowww.com. The forth and final line of the entry begins with the word from. What this is is what we call the referring URL. This is the URL that either the user entered directly or it chose the search that produced the connection to the flagged web

site, in this case it was a Yahoo search and it shows you the search terms that were used.

BY MR. ZICK:

Q So this was a 12 year old searching for the terms pinkpussy?

A That's correct.

* * * * *

[TESTIMONY OF D. BIEK]

[Mar. 28, 2002]
[pp. 134-135]

[CROSS- EXAMINATION]

* * * * *

THE WITNESS: That's correct.

JUDGE BECKER: —approach you?

THE WITNESS: That's correct, yes.

BY MR. HANSEN:

Q And the anonymas e-mail comes only after you've twice told me I don't have any expectation of privacy, right?

A The viewer has assented to two—those two screens and then it comes to this point.

Q Okay. Let's talk about an example where we do know context. I think you testified on direct that

Playboy (sic) Library does have a subscription does have a subscription to Playboy Magazine?

A We do.

Q And it appears of microfiche, correct?

A That's right.

Q And a ten year old can go and get the microfiche and load it on the machine and look at the Playboy Magazine?

A That's right.

Q And they can look at a picture of Miss September on the microfiche machine on the floor of the library with the screen sticking put so the passers by can see it, correct?

A We have a couple different styles of machines, but the one that you described does exist.

Q And Playboy.com is blocked by Cyber Patrol on the web, right?

A It is.

Q And so if a 45 year old female physician goes to your computers, and wants to see Miss September, she can't see it right?

A Not, on the internet station.

Q And if she sent you a request asking to you unblock Miss September you would say no, wouldn't you?

A I would.

MR. HANSEN: No more questions, Your Honors, thank you.

JUDGE FULLAM: Redirect?

JUDGE BECKER: Is there some particular reason why Miss September was chosen.

MR. HANSEN: Because it was the example we sued the other day.

* * * * *

[TESTIMONY OF J. SUDDUTH]

[Mar. 28, 2002]
[pp. 234-241]

* * * * *

Q Was there ever a time during this process we've discussed so far when any of the board members proposed removing the internet from the library?

A Yes. We discussed the various options and it—that option was definitely on the table in June of 2000 when we actually made—we actually made—proposed an addendum to the 1998 policy.

One of the options that we discussed very seriously was in the interim before we had this new internet use policy put in place, we actually considered discontinuing internet use service at the library.

Q When did the operations committee receive the log that said Exhibit 134?

A My recollection is we received the log in—it would have been in June 2000.

Q And you mentioned an addendum to your policy. Is that Exhibit 122?

A Yes.

Q And can you just highlight for us the differences between the June 22nd, 1998 policy and the addendum?

A Well, keep in mind, the addendum was generated right after we saw the severity of these logs that the staff had been collected.

We knew we needed to make some changes very quickly, hence what we did with the addendum was we put in time limits, two hour time limits per day. Essentially what happened with—with the computers at the main library as well as at all our branches, is we cut back, we reduced severely, I think it was in the neighborhood of 25 to 30 percent, the number of computers that had internet access.

We reconfigured them in such a way that they could be directly monitored by the reference desk at main, as well as the circulation desk at all the branches to give the librarian a visual contact with all the screens.

Q So you reduced the number of terminals with internet access?

A Yes.

Q What happened to the privacy screens and the recessed furniture?

A Also in the policy in number two, we actually removed those because it was clear from the documentation we were getting from the handwritten log from the staff that the problem wasn't going away even after we implemented the furniture and the privacy screens.

Q Now, did you have a code of conduct during this early 2000 range?

A We did.

Q Why wasn't that sufficient to deal with whatever problem the library might have been having?

A Well, the—my position and it was pretty clearly the board's position also at that particular time was—we wanted to take a position where—a proactive position because with the code of conduct, what was happening was in essence we were putting the staff in a position of almost literally policing an area, and a lot of issues that actually—by the time it got to a code of conduct violation, some of these situations had really gotten out of hand.

We simply felt like it wasn't fair—we had an obligation to our staff. It was a very, to put it mildly, a very unfriendly work environment for them and we felt like we had to make some changes, hence actually taking action so that this information didn't get into our library so it didn't turn into a code of conduct issue.

Q You mentioned the effect on the staff. What in particular was the effect on the staff of some of these incidents that are documented in the log?

A Well, first of all, we noticed a very high turnover rate among reference librarians that worked in that area, and it's also documented in our report, operations committee report that we had staff members who were being literally stalked by people who had been surfing inappropriate material in our internet area.

We had one staff member who was being e-mailed, being sent harassing e-mails by a similar patron, so it was clearly—it clearly had gone beyond the point of just viewing inappropriate material. It was actually the conduct.

Q When you say inappropriate, what do you mean by that?

A Pornographic, obscene material, clearly such.

Q Now, turning you back to the addendum to your policy, was that meant to be a long-term solution?

A No. In fact, when I mentioned one of our options was to actually—to actually discontinue internet service, that was going to be—whatever solution we came up with was going to be temporary until we could get a new internet use policy in place.

Q Tell me what happened next with respect to the internet use policy or internet access at the library?

A After we approved the addendum in June, then in the next month, in July of 2000, the operations committee met I think it was July 17th, I could be wrong, but it was in July 2000, the operations committee met just before we had our scheduled board of trustees meeting in July.

We on the operations committee formally adopted the report and the report of essentially abuses and the report essentially documented why we needed a new more comprehensive internet use policy.

The operations committee adopted that report and also adopted a new internet use policy and referred it to the board later in the day.

Q And Exhibit 121 would be the operations committee report, is that right?

A That's correct.

Q Did you participate in preparing any part of this report?

A I did, yes.

Q Could you describe the process by which the report came to be prepared?

A Essentially the process was, we took the log, the handwritten logs that the staff had made and we essentially incorporated those into this report and we tried to organize the report in such a way that it clearly documented each of our steps, you know, kind of along the way with—going from totally unfiltered internet access to really needing filters on our computers and we used those internet logs that the staff had compiled as evidence, if you will, and we actually categorized.

One of the members of the operations committee actually helped categorize these into different areas—

Q Take a look at—

A —almost like areas of severity.

Q All right. Take a look at page six of the report if you would and could you tell me if the incidents listed there are fair and accurate representation of what you'll find in the incident log that's Exhibit 134?

A Yes.

Q Can you tell me what your reaction was when you heard about these incidents?

A I was shocked.

Q Okay. Is there any particular incident or incidents that particularly shocked you?

A Yes, there were two in particular. One happens to be on page six, it's the second one down, the live video of people engaging in sex with animals, including "a girl dressed in leather with a strapped on plastic penis having sex with a dog," and "a man having sex with a chicken."

Q Were you aware at the time that those sorts of materials were available on the internet, Mr. Sudduth?

A I was not.

Q And would you take a look, please, at pages eight through 17. We'll start on page eight and going forward to 17, is that the categorization of the incidents you mentioned just briefly before?

A Yes.

Q And is there anything in particular in that set of incidents that drew your attention when you found out about it?

A Yeah. Well, obviously—well, I'll just tell you from my perspective, all of them are extremely graphic and extremely concerning.

One in particular hit me very hard. I have a child that's roughly the same age that referenced in this particular entry. At the bottom of page 12, the November 30th, 1999 entry and I'm not going to bore you by reading that to you, but essentially what happened was, we had an older gentleman—when I say older, he was 28 years old—he had been viewing pornographic information on one of our computers.

An eight year old boy walked by, he grabbed the eight year old boy by the arm and said, "Hey, buddy, take a look at this." And he pulled the boy over and held him by the arm in front of the screen and forced the little boy to look at the pornography. The little boy immediately turned his head away. Upon being reviewed by the staff, the adult male patron said, "Ten years now he'll be begging for it."

Q After the operations committee had received the logs and Exhibit 134 and received the operations committee report, what did the committee do next?

A I'm sorry, repeat your question?

Q What did the committee do next after the report was issued?

A Well, after the report was issued, the operations committee referred the report, you know, which referred the adoption of the report to the full board and the board of trustees adopted the operations committee report, as well as the new internet use policy.

Q Is Exhibit 119 in current internet use at the library?

A It is.

Q And does it provide for filtering of all patron access except for the one terminal you described?

A It does.

Q Are the staff terminals at your library filtered?

A No, they're not.

Q Does the policy prohibit a chat?

A No, it does not.

Q Did you vote in favor of Exhibit 119?

A I did.

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[TESTIMONY OF B. CRONIN]

[Mar. 29, 2002]
[pp. 89-97]

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Q Can the proliferation of the market for digital pornography pose a problem for librarians?

A I think there's an intersection of trends. One is the growth and the availability of digital pornography, and the other is the growth in the number of network computers in public libraries.

If you look at statistics from (indiscernible) National Commission and Libraries and Information Science, almost every public library in the United States is wired, some extensively, some minimally. So in theory depending upon whatever policies are in place and how they're enforced and so forth, but in theory an individual can go into almost any American library public library and access online web sites, which are displaying depending on how you wish to go about classifying it, soft middling hard and beyond hard pornography free.

This creates from what I've seen int he literature and from discussions with librarians problems in the work place for librarians and raises issues f public concern and indeed public safety.

Q Turning to the physical collections of public libraries in the United States, what is the OCLC database?

A It's a cooperative cataloging service established I don't remember exactly when, to summarize it makes available approximately 40 million catalog records. Covering not just, I have to add libraries in the United States, but world wide. This organization—

JUDGE BARTLE: What do you mean when you say it creates a concern for the public safety? Are you talking about physical safety of people?

THE WITNESS: I was referring to the fact that on occasion it has been documented that minors in public libraries connect with through chat rooms pedophile.

JUDGE BARTLE: I see.

THE WITNESS: On occasion those connection result in physical meetings which raises the specter of threat and physical harm.

I'm sorry, do you want me to revert to your last question?

BY MS. GACKI:

Q If you could.

JUDGE FULLAM: Are you telling us about OCLC?

THE WITNESS: I was telling you very briefly about OCLC. I think what is a jumbo catalog with 40 million records from 48,000 plus or minus libraries around the world, but many North American libraries.

Q Have you looked in the OCLC database to see how many libraries subscribe to Playboy?

A Yes, I asked one of my senior colleagues at the school to do that for me.

Q And what were the results of your search?

A The results are reported here, and I don't remember the precise number, but of the 40,000 or so libraries slightly more than 400 I believe are listed as having Playboy in their collections.

Q Did you also ask a colleague to look in the OCLC how many libraries subscribe to Hustler?

A Yes, I did.

Q And what were the results of that search?

A In that case I believe that the number was eight for the 40,000 libraries in question.

Q Do most American public libraries currently have pornography in their physical collections?

A No, American public libraries to be perfectly blunt and simple about all of this do not and never have collected pornography. Whether it be soft, whether it be hard or whether it be of any other kind, and nor historically have they ever done so.

JUDGE BARTLE: Of course that depends on one's definition of pornography, does it not?

THE WITNESS: It does, well, then I wold be happy to substitute another word sexually explicit materials for pornography.

BY MS. GACKI:

Q To what do you attribute the absence of pornography or graphic sexually explicit materials?

A Well, let me if I may, and it's not out of order preface my response by saying, I do not have any personal views on whether or not American libraries should or should not offer pornography.

I think there are perhaps three sets of factors that come into play. One, community standards, two, the legal framework. Certain materials are deemed to be obscene under the law. Child pornography is illegal, and thirdly the values both personal and professional of librarians.

So, it's community standards, professional librarians, and the legal and statute framework within which these institutions operate.

Q When libraries have collected pornography have they treated it differently from the rest of their collection?

A That is I think true in some cases at least. A concrete illustration might be the effective physical segregation of certain classes of material.

So, to put it very mundanely a pornographic magazine such as this might be available in the library and recorded in the catalog, but it may stored under a desk, it may be under lock and key. It may be on a top shelf, et cetera, et cetera.

So, there is a kind of apartheid on occasion I suspect in the way in which this category of material is and has been treated in America's public libraries.

Q If libraries had unlimited space and budget in their physical collections do you think that libraries would purchase and acquire all materials available?

A I can do no better than echo the comment of one of the previous witnesses who said, no. Librarians have never attempted to and even in a hypothetical world where they had infinite physical space and unlimited budgets I simply cannot imagine that as being a goal considered worthy.

The reason we have professional librarians in the public sphere is to build to develope, to create collections that have certain characteristics, and one of the characteristics is that the material is deemed to be very

often balanced in it's coverage, and deemed to be of requisite and appropriate quality.

Q And if—

A And if we didn't do this we would be having warehouses, and we wouldn't need librarians. The goal is not universal coverage, selectivity has always been of the essence in the practice of professional librarianship in this country.

Q Is the practice of selection consistent with the practice of filtering?

A Yes.

Q And why is that?

A Let's try and bring it to life a mundane example or two.

I want to buy a book of French provansal (ph) cookery for the library. I have two choices, it would be I look at my decisions is going to be based on for the sake of illustration, the level of the text, the accessibility of the text, the authority of the text, the engaging nature of the text, the reputableness of the publisher, reputableness of the author, the readability of the text, the quality of the illustrations, the quality of the pictures et cetera et cetera, and this is a fairly non-contentious I think choice, do you chose A over B, and I described that as utilitarian choice, functional choice.

Let's take a slightly different case, and I'm sort of making these up in real time. I want to add some material to the childrens collection. Book A and book B, maybe they're in different themes.

For the sake of argument, this book contains stereotypical imagery. For the sake of argument this book is also written in a way that suggests implicit or explicit racism, or it uses a language or it has a tenor that is redolent colonial or imperialism, colonialism or imperialism. All things being equal this book will not find a place in the shelf of the typical American library.

Librarians make judgments based upon such factors as stereotyping, whether they're gender roles, or ethnic characterizations.

Very simply political correctness will in some cases routinely inform book selection decisions in this country. Political correctness is an ideological not a utilitarian variable, and that's the kind of distinction.

We know from survey work over the years both fairly recent and more distant, that America's public librarians exercise choice and do not select materials which are deemed in many cases to be either by them personally or by the community to be contentious and that includes pornographic material.

American librarians have historically and currently still do exclude material on the basis of factors other than those that I wold label utilitarian or functional.

Q Is there any reason to treat the internet differently?

A It seems to me there is a glaring inconsistency if one does, and that is the single reason that I am sitting here today.

I think there is a fundamental structural inconsistency in the case being put forward by one of the

plaintiffs, the American Library Association and prevailing and historic practice in public libraries in this country, and I would add if I may that the views expressed by the American Library Association are certainly not the views of all and possibly in some cases not even the views of a majority of professional American public librarians.

[CROSS-EXAMINATION]

BY MR. SMITH:

Q Good morning, Dr. Cronin.

A Good morning.

Q I'm Paul Smith counsel for the AMerican Library Association.

A Nice to meet you.

Q How are you? I want to understand your views about ways in which filtering should be used in our libraries a little better.

You don't believe do you that filtering should be employeed to block access by adults to web sites that are A perfectly legal for them to view, do you?

A That is correct, I do not.

Q And you wouldn't therefore believe that a library should filter out material that is legal for them but harmful to minors from access by adults?

A No, they shoud restict the materials hamrful for minors but they should allwo material which is legal to adults.

Q Okay. And a web site which had material which is redlilent colonialism and imperialism you would say that that should be perfectly available to any one in the library, wouldn't you?

A That's not what I'm here to discuss, I'm here to discuss pornography.

Q Well, you mentioned an analogy between collections decisions, and gave an example of a book which would be excluded from the library because it was redolent of colonial ism or imperialism, and I want to understand the extent of the analogy—

A What I'm saying—

Q —so I need to know whether or not you agree that a web site with those same charectistics whould be avaliavble in the library?

A If it is legal and if it is consistant with community standards and it is consistant with the polic of the professional librarian, then I would defer to that locally made decision.

JUDGE BARTLE: Well, you wouldn'ty say that you could exclude Rudgerd Kiplin's writings he was he was certainly an imperialist.

THE WITNESS: For what my opinion is worth I most certainly would not because they have both historical and * * *

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[TESTIMONY OF D. DAVIS]

[Apr. 1, 2002]
[pp. 74-79]

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Q Dr. Davis, have you reviwed the CIPA legislation for this case?

A I have.

Q And do you have an opinion as to whether ot not libraries would use measures to restrick access to sexually explicit materials on the internet or acting consistantly with traditional mission and practices of public libraries?

A In my opinion it is consistant with the principles employes in public libraries.

Q Now, how familiar are you with the technology protection measures referred to in CIPA?

A I have mostly read about them.

Q And does that effect your ability to render an opinion on this topic?

A I think I understand the major arguments.

Q Can you begin by describing for the Court the various types of libraries, how they differ in terms of clientel and purpose?

A Well, there are essentiall four main types of libraries. The public library of course which deals with

the general population, the community. Academic libraries, academic and reaseach libraries have the clientel essentially related to a higher education and beyond. School libraries deal with the school population, and special libraries are kind of those that are uncategorized but deal with a more limited kind of clientel which is specialized, like industrial libraries, Governmental agencies, and alike.

Q What would you say is unique about the practice of public librarianship?

A The public library is not informed by the curriculum of a school by the categlog of a university, by the needs of a industrial or a commercial company in fact. It is designed to serve the needs of the community which is essentially providing the support.

Q And as a library historian in your opinion, what is the historic purpose of public libraries?

A Well, the purpose from the origins in the mid 19th Century have been to provide a framework of resources to enable the population to engage in self learning life long learning cultural enrichment, and leasure reading.

Q So, would you say that there's a recreational component too?

A I would think there is, yes.

Q Now, Exhibits 188B, I'm sorry, C, D, and E are mission statements for some of the libraries that testified. Multnomah County, Norfolk Public Library and Fort Vancouver Public Library, have you reviewed those mission statements?

A Yes, I have reviewed them.

Q And would you say that they conform to the historic purpose that you described?

A I think they describe them rather well actually. I'm looking at the Norfolk Public Library statement which is 188D, and it says better than I could the library provides equal opportunity access to information, high quality book and multimedia materials, programs exhibits and online resources to meet the needs of our diverse community for life long learning the cultural enrichment and intelectual stimulation.

Q Now, what would you say the primary function of professional librarians is?

A In my view over the history of the public library movement it has been to assemble the resources to meet the goals of the purpose of the library and that involves selection and acquisition of appropriate materials.

Q And what is a librarians role in collection development?

A Well, that's a primary one. It is usually delegated to the professional staff, and the director has authority from the board.

Q Do librarians make determinations about what is appropriate or inappropriate for inclusion in a library collection?

A They have to make those kinds of judgments all the time.

Q And do llibrarians have discuss to chose not to incllude materials for a collection?

A Well, the wouldn't look at it like that exactlty, but the materials which are not selected are in fact not in the library.

Q Even if for instance it's a book on light adult humor, is it possible that they would chose not to select that?

A It's possible. It may not be within the—it may not be a high priority based on the need that that staff understands in the community?

Q Now, how autonomus are librarians in making these selection decisions?

A They have a fair amount of autonomy. They make these decisions however, not on the personal whim and their own personal collecting habbits.

Q Now, what was the purpose—what is the purpose of library collection development policies?

A Well, they would—the policies are designed to enable them to make consistant decisions about materials. These are policies that are frequently and best drawn up in conjunction with representatives from the community.

Sometimes public hearings, discussions, input from the public and when these policies are then codified the priorities of the community these are written up and the board will likely approve this, and that becomes the policy.

This ought to be reviewed regularly as communities change in their interest and focus and so forth like that, but once it is done it means that the professional stafff have some basis on which to make their day in and day out kinds of decisions.

Q Okay. So what kinds of materials are generally included in public library collections?

A Well, they will run the gamet of the subject matters enumerated in the Doowey (ph) Decimal System for example from religion and philosophy and physchology to science of the arts, history, biography and also finction of various kinds.

Q Do public libraries—

A Children—

Q —excuse me.

A —and also by format and age groups like for childrens books.

Q Do public libraries collect sex related materials?

A They will have those which are appropriate to their collecting policies.

Q Can you give me some examples of sorts of materials that might be found in a public library that are sex related?

A The Joy of Sex perhaps which we're all familiar with would be an appropriate title. Other materials which have become classics in their field. They will have some, yes.

Q Would public libraries typically collect graophic sexual materials that are judged to lack educational or medical value?

A I know of none that do.

Q If a library had all the space and money that it needed that it could popssibly use, would a public library select everything for inclusion in it's collection?

A I think not. One of the roles of a community based public library is to find those materials which would be of most direct benefit to the diverse members of the community, and the whole intent is to have a well selected collection, not everything on every topic.

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[TESTIMONY OF D. DAVIS]

[Apr. 1, 2002]
[pp. 83-89]

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Q Do libraries generally exclude illegal materials from their print collections?

A I think they do, yes.

Q And as you said, local determinations are considered in what is included in a collection as long as it's not illegal, is that correct?

A The legal issue is simply the minimal standard of what will not be found. Local options will, in as broadly a manner as possible. They have the opportunity that

the responsibility to tailor the collection to meet the needs of the community.

Q Let's turn now to selection criteria. What selective criteria are considered by librarians when deciding which work should be selected?

A Which books should be—

Q I'm sorry, what sorts of collection criteria?

A Selection—well, they would look at such things as the content of the material, which would involve the accuracy or the currency, the niche this particular title holds in relation to what else is in the collection.

They would also look at the authority of the author, if it's a non-fiction title, the publisher. They would look at the characteristics of the presentation, is it appropriate, is it useful, are there better things that we should order rather than that, and also actually the physical standards of the book.

Q Do librarians use resources such as selection aids in making these decisions?

A They must use these all the time.

Q And what sorts of selection aids do they use?

A The profession has recognized this from almost the beginning, and has produced a series of review journals, bibliographies of various kinds, some of them general, some of them by type of library, some of them for type of user.

Q What are some examples of such—

A Well, one of the best known examples of this and most widely used is the highly acclaimed American Library Associations reviewing medium Book List, which was begun, I think, in 1905. I mean it's nearly 100 years old.

JUDGE BECKER: What were the first words of that, they analyzed what medium?

THE WITNESS: A well-respected.

JUDGE BECKER: Yes, but what's the title, what's it called?

THE WITNESS: Book List.

JUDGE BECKER: Okay. There were a couple of words in front of Book List.

THE WITNESS: Venerable or highly respected or—

MS. BORNSTEIN: He said that it was published by the American Library Association.

JUDGE BECKER: Okay. The venerable, okay, ALA's booklet. All right.

THE WITNESS: Right. And this is used widely by selectors in the public library, school libraries, some, and I've even known a few academic librarians to use it.

BY MS. BORNSTEIN:

Q Why do librarians use these selection aids?

A No one librarian could know it all, and no matter what their field of expertise, their training, their

education they are dependent on the professional evaluations of their—of colleagues.

Q And why is that important?

A Well, it helps guarantee something of the quality of the selections. There are many public libraries that, in fact, require or find highly desireable that a book which is selected be, in fact, listed in Book List or in Library Journal or a number of the other kinds of media which are used for this purpose.

Q Now, let's just focus on the specific aspect of training library students and educating library students.

Can you describe for the Court the sorts of courses and educations that an MLS student would study if they were choosing to go into public librarianship?

A All right. Most of the professional schools today train much more broadly than those going into libraries per se. But those going into libraries—well, let me back up just a moment, if I may.

Most schools will have required courses which every graduate is supposed to have, introductory courses, prerequisites and things like that.

Beyond that, people tending on a career in libraries, into public libraries, would take courses in reference and bibliography and materials. They would also take likely a collection development course, while not an official requirement, a very high percent would take that course.

They would take courses in the nature or the role of a public library, a kind of an administration course that would help them go through that, and they might well take a course on modern society and looking at the diversity issues and census building and all those kinds of things.

Q Okay.

A So a mixture of required courses and electives.

Q Great. Now, let's talk about the different formats of library materials. When libraries carry an item, let's say in book format, do they necessarily carry that same item in other formats, a video or CD ROM or however else it may?

A Not necessarily. Some will do that and others will not.

Q And when those other media such as videos or DVDs were first included in library collections, how did libraries apply collection determinations for those items?

A Well, that's an interesting question because, especially in the 20th Century when you begin to have sound recordings, motion pictures, and other kinds of media coming along, librarians always had to find a way or to think of how their principles of selection would apply with respect to a new medium.

And after a period of discussion and so forth, they usually have come up with these. Most of the selection policies I've seen in the material you've supplied have, in fact, lists of the criteria which generally parallel the

kinds of principles used for the selection of other print materials.

Q Now, do you think it's appropriate to plug the internet in in the library, turn it on and walk away?

A I think that's not—no.

Q What is your view about how the internet should be handled in the library as a new medium?

A Well, I think it should be—it's a phenomenal resource and it needs to be evaluated, used to enhance the principles and the mission of the public library as has been stated.

Q We spoke a few moments ago—

JUDGE BECKER: The need to be tamed, is that a good expression?

THE WITNESS: Well, if you're following the model which our profession has used, it will need to be evaluated and organized, if at all possible. Very difficult, but—

BY MS. BORNSTEIN:

Q Is there some—what do you think are some reasonable ways to try and evaluate that? Are filters a reasonable way to do that?

A I'm sorry?

Q Are filters a reasonable way to try and organize?

A Well, it is one way and it's a way that—that is—it bears some resemblances to the kind of standards which are employed in other media.

Q Now we spoke a little while ago about resource constraints—excuse me.

JUDGE BARTLE: Well, are there any differences?

THE WITNESS: Yes, there are.

JUDGE BARTLE: What are they?

THE WITNESS: And that raises a problem. That's an issue.

JUDGE BARTLE: What are the differences?

THE WITNESS: Well, the—

JUDGE BARTLE: That raise the problem?

THE WITNESS: Well, when one subscribes to the internet, it's like breaching a dam in a large reservoir and the materials just come.

To use another analogy, it is not regulated, it is not pre-evaluated. And so whereas in a conventional library situation, these titles, these kinds of information would be identified in advance. And they would be selected.

With the internet, because you cannot do that, you have to do it after the fact and approach it from the back end, as it were. And that means looking at your policy, your users, your community, your taxpayers and saying, all right, what is consistent with our policy.

And you would attempt to apply reasonable filters on those materials.

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[TESTIMONY OF D. DAVIS]

[Apr. 1, 2002]
[pp. 93-108]

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JUDGE BECKER: What you did say before is that when libraries purchase print materials, they use guides. Do they subcontract it out or do they—do they ever—

THE WITNESS: Well, how it works is that a vendor will provide materials based on that selection policy. For example, we want all of New York Times' best sellers for this year, or other materials are very low in our collecting profile. And these materials will then arrive at a library and if a library needs to return more than five percent or so of those materials, the vendor will say, well, you haven't drawn your collection development policy well enough, your profile which is based on that policy.

So with a vendor, they do the best they can to meet your needs, and then you look at the materials and you say, yes, they're right on this one, they're wrong on that one.

JUDGE FULLAM: Well, which comes first, the proposal from the vendor that the library purchase these particular books, or a request from the library to the vendor, we want to purchase these particular books?

THE WITNESS: Well, they have often delegated this to the vendor once the collection development policy is designed. And the vendors, however, do have librarians who work in their offices as they look at these profiles.

JUDGE FULLAM: Do book salesmen go around from library to library peddling their wares?

THE WITNESS: Oh, there is some hustling among these vendors, yes, sir.

JUDGE FULLAM: I thought so.

BY MS. BORNSTEIN:

Q In your report, you make an analogy to these approval plans in the online context. Can you sort of explain that to the Court?

A Well, it's almost a reversed mirror image of the situation. With an approval plan, you would return those materials which did not meet your collection development needs, and you would retain those which do.

I guess the nearest analogy with the internet would be that you look at the variety of materials that are there by various categories, and—which have already arrived in your library, and you would say, these do not meet them and I will employ a filter to prevent them in this particular library.

Q Now, if a patron has a specialized need for information that's not available in a public library, what does a librarian do to help that patron?

A The person—the professional librarian will attempt to ascertain the real need of the patron. This is often viewed kind of like a reference interview where you find out exactly what is needed, which will help the user.

And then you'll attempt to find it, either in other libraries in your system or you would go through an Interlibrary Loan procedure, or you might refer a patron to a government agency or a commercial book store or whatever.

Q Now how frequently is Interlibrary Loan used?

A Well, my understanding that outside of the systems of public libraries and sometimes multi-type libraries, that it is relatively low, less than one percent of the circulation.

I've seen figures of .25 percent, but I would say somewhere under one percent.

Q Okay. Now, we spoke briefly about the resource constraints in the print collection. Are there similar resource constraints that affect internet access in public libraries?

A The constraints there would, I guess, involve the length of time one can stay on a terminal, the need to sign up for a spot on this. It would very much like the kind of requirements sometimes used for using microfilm machines or a record of the players, video machines.

The kind of materials I've—policies I've seen also cautions about what kinds of materials ought not to be viewed.

Q Now, have you reviewed the internet use policies for the libraries in defendants' Exhibit 141 to 178?

(Pause in proceedings.)

A What numbers were those again?

A 141 to 178.

MS. BORNSTEIN: Your Honors, defendants' Exhibits 141 to 164 are internet use policies for libraries that currently use filtering software. And the Exhibits 165 to 178 are internet use policies for libraries that have certified compliance with CIPA in funding year four.

(Pause in proceedings.)

JUDGE FULLAM: What's the question?

BY MS. BORNSTEIN:

Q Have you reviewed those prior to today?

A I have looked them over.

Q And what is your view as to whether the standards established in those policies are consistent with traditional principles of librarianship?

A They seem to me to be generally in line with those kinds of principles and standards.

JUDGE BECKER: These are from—appear to be from all over the country?

MS. BORNSTEIN: Yes.

THE WITNESS: Right.

MS. BORNSTEIN: A variety of library systems.

BY MS. BORNSTEIN:

Q Does using a filter to exclude sexually explicit material constitute censorship in your view?

A Not in my view.

Q Now, you're aware that some filters may block things that they are not configured to block, is that correct?

A Yes. That is the case.

Q And does that concern you?

A A little bit, but not as much as the—as the benefits and economies of protective filtering devices.

Q Now, on page 11 in paragraph 42 of your report, which is Exhibit 186, you say that for libraries to abandon this function, meaning the function of selection and deselection—

JUDGE BARTLE: What page are you on again?

MS. BORNSTEIN: I'm sorry. Page 11, paragraph 42, in Exhibit 186.

JUDGE BARTLE: Thank you.

BY MS. BORNSTEIN:

Q "For libraries to abandon this function, the function of selection and deselection, in relation to the worldwide web, that they have historically carried out

as a public trust with conventional media, is tantamount to abandoning the core of the professional vocation."

Can you explain to the Court what you meant by that?

JUDGE BECKER: What page is that again?

JUDGE BARTLE: Eleven.

MS. BORNSTEIN: Page 11, paragraph 42.

JUDGE BECKER: All right.

THE WITNESS: Well, this statement reflects my opinion that the expertise, the professional expertise which prepared librarians bring to a public library is largely that of selecting materials which will be most useful, most appropriate for the communities which have hired them.

JUDGE BECKER: Well, Dr. Davis, you say here that for librarians to abandon the function of deselection is tantamount to abandoning the core of a professional vocation with other professionals or for its clients unregulated internet for information.

But when I asked you before as to whether the professional library could, in effect, be a surrogate for a technology protection device, you said that it was humanly impossible for them to do it.

So if that's the case, how can you fairly say that there's an inconsistency with the purpose of the public library for librarians to abandon what I'll call now the—and what you referred to—as the deselection

function if it is physically impossible for them to do it in the internet context?

THE WITNESS: I think the phrase that I used was selection and deselection, and with respect to my previous comment, it was in the context that with the internet it would be very difficult, extremely time consuming for a library staff member to look at every single web site and—

JUDGE BECKER: Isn't that what we're talking about here is the internet? I mean, I assume that is what paragraph 42 refers to?

THE WITNESS: I guess my point was, Your Honor, that because librarians cannot do it on that micro-basis, they ought not to abandon it all together.

JUDGE BARTLE: I guess what you're saying is that the librarians are delegating it to these internet companies.

In other words, they're delegating that function, they're acting as the agents of the librarians?

THE WITNESS: It's a technological solution to a unique technological medium.

JUDGE BECKER: Well, it could be that Judge Bartle and I have, by posing these questions to you, interrupted your train of thought. Why don't you tell us, in response to Ms. Bornstein's question, what you mean by paragraph 42?

Or does it speak for itself?

THE WITNESS: What I mean is, this is a very difficult area —

JUDGE BARTLE: We would agree with you on that.

THE WITNESS: —and librarians, professional librarians who come from a long tradition of establishing collections which are to be trusted and used for the community's good, because it is difficult if not impossible to site-by-site select and reject, they ought not to abandon their principle of maintaining the quality resources.

And in order to do that with the internet, one can't just throw up one's hands and say I can't do it, but it needs—one of the ways of doing that at the present time is through the development and refinement of filtering devices.

JUDGE BARTLE: You've talked a lot about the—there's a selection policy, even if the library had unlimited room they would be somewhat selective. But aren't you also saying that in their selectivity, they can't be selective in excluding one political viewpoint as opposed to another?

THE WITNESS: Absolutely.

JUDGE BARTLE: There's some refinement, there isn't absolute selectivity. And there's got to be limitations on that, I would think.

THE WITNESS: Exactly. And I think all the policies that I have read anywhere would endorse the policies put forth by the ALA's bill of rights which has some clause in there, I can't cite it exactly, that materials are

not excluded for political reasons, racial reasons, gender, and a whole lot of things.

MS. BORNSTEIN: Your Honors, at this point, I would like to move into evidence defendants' Exhibits 141 to 178, the internet use policies, defendants' Exhibits 186, 187, 188, 188A and 188C, D, and E which are—

JUDGE BECKER: Any objection, Ms. Beeson?

MS. BEESON: Yes, Your Honor. As to just the 141 through 178, those are filtering policies for libraries who are not involved in the case. They're hearsay. The policies are hearsay, and so we do object to those.

JUDGE BECKER: Come on. Aren't they admissible under Federal Rule of Evidence 8038(c) or—

JUDGE FULLAM: Everything in these books is hearsay, practically.

JUDGE BECKER: 8038—under 8038, I mean they are declarations of public policy. Overruled.

Anything else?

MS. BORNSTEIN: Thank you.

(Defendants' Exhibits 141 through 178, 186, 187, 188, 188A, 188C, 188D, and 188E are received in evidence.)

JUDGE BECKER: You may cross-examine, Ms. Beeson.

CROSS-EXAMINATION

BY MS. BEESON:

Q Good morning, Dr. Davis.

A Good morning.

Q You agree, don't you, Dr. Davis, that intellectual freedom is a basic building block in the way Americans view the world of libraries?

A It's a foundation.

Q And although you believe that the primary purpose of libraries is educational, you define education as "The whole corpus of human experience that has contributed to who we are as a people in a species," right?

A I have said that.

Q And you believe that there would be relatively little that would not have some value to education, is that right?

A Yes.

Q In fact, you think that libraries could responsibly collect even extremist materials because there might be an educational value in such materials, isn't that right?

A Libraries some place, I doubt if a public library will do that. I think the context there is any library, and its research libraries.

Q And you believe that libraries should not prevent adults from accessing even pornography in public libraries as long as it is not illegal, isn't that right?

A I think illegal is the minimal ground for that.

Q Okay. And in fact, you think that the library has a professional duty to provide access to materials that are not illegal; isn't that right?

A That's true.

Q And you would depend on the Courts to decide what is legal and what isn't ultimately, right?

JUDGE FULLAM: Or the legislature.

THE WITNESS: On the legality issues, yes, of course.

BY MS. BORNSTEIN:

Q And you would agree that it's the librarian's job to assist patrons in finding material even if that material is not within the public library's own physical collection, isn't that right?

A They would make an effort to do this.

Q And they do that through Interlibrary Loan and referring patrons to other libraries, et cetera, as you mentioned before?

A Yes.

Q You say that—

JUDGE BECKER: You said they would do that. The question was do they, within the field of Library Science, is that generally considered to be an obligation of a librarian to seek an Interlibrary Loan?

THE WITNESS: Insofar as they're able, I think professional librarians want to help patrons receive materials for legitimate—

JUDGE FULLAM: And they feel an obligation so to do, right?

THE WITNESS: Yes.

JUDGE FULLAM: Thank you.

BY MS. BEESON:

Q You say that blocking programs could be used as selection aids much like those traditionally used by librarians, right?

A I say they bear some similarities.

Q Okay. But when a library makes a selection decision, it is not sending a message to patrons that the materials within the print collection should be used to the exclusion of other materials, isn't that right?

A Would you repeat that question?

Q Sure. When the library makes a selection decision regarding its print collection, it is not sending a message to its patrons that the materials within the print collection should be used to the exclusion of other materials, is it?

JUDGE BECKER: I don't understand what that means.

THE WITNESS: Only insofar as it's not—it's what they have at that particular library.

BY MS. BEESON:

Q And when a library returns materials to a vendor in this third-party, the use of a third-party vendor, does that decision prevent a patron from seeking that same material through other means?

A No.

Q Okay. And you do not believe, do you, that librarians should provide access only to internet sites that they have reviewed and preselected beforehand, do you?

A No.

Q Okay. And the need to protect children should not affect the selection of materials available in the library to adults, should it?

A Not necessarily. If it's—if, as the policy is drawn up, it's possible that some of those items may also be in the adult policy as well. I mean, our library does not collect explicitly sexual images which have no textual value either for adults.

Q Hm-hmm. But generally speaking, you don't think that the need to protect should influence the selection of materials for adults?

A I think not.

Q Okay. And you believe that librarians are supposed to be intellectual provocateurs, don't you?

A I do.

Q And if 1,000 residents of a community signed a petition to have a book removed from their library, you do not believe that would be sufficient for a library to remove the book, do you?

A Not sufficient reason.

Q In fact, you train your library students to resist any pressures by their communities to make selection decisions based on the controversial or offensive nature of the material, don't you?

A Yes.

Q And you believe that libraries should not install filters on terminals for use by adults unless the materials blocked are illegal, isn't that right?

A I think that's the primary foundational goal, yes.

Q And you believe that there are some detrimental effects to filters, isn't that right?

A Some.

Q Librarians are not trained to inquire generally into the intent of a patron for a particular request for materials, is that right?

A Yes and no. In the reference interview, it's always helpful if a professional librarian can ascertain the purpose for which an item will be used because that will

help him or her find the material which will be most appropriate.

That's not always possible to find that out. Sometimes patrons don't know. And they would be reluctant to tell you, but if you can find that out, it's viewed as a not unprofessional act.

JUDGE BARTLE: So if somebody asked for a book on sexually transmitted diseases, the librarian should ask why do you want to know about that subject?

THE WITNESS: You would ask perhaps, is this for a school report, is it for personal knowledge, is it—

JUDGE BARTLE: You would, that's appropriate?

THE WITNESS: If you're—in a given instance, if they don't tell you, do you want an encyclopedia article or would you like a book. If it will help you get to what you—what the patron wants and the patron will let you know that, it will help you. But you—

JUDGE FULLAM: If it turns out that your interview reveals that the patron really does want a particular book, do you say, but you're only reading it for your own amusement and that's not a good enough purpose, therefore I'm not going to get it.

THE WITNESS: I don't think the librarian would say that, no.

JUDGE FULLAM: Okay.

BY MS. BEESON:

Q Okay. And librarians are not trying to interview patrons for the purpose of denying the patron access to certain material, are they?

A That's not something they—it may happen, but that's not what they're aiming at, no.

MS. BEESON: That's all I have, Your Honor.

JUDGE BECKER: Any redirect?

MS. BORNSTEIN: No redirect, Your Honor.

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[TESTIMONY OF B. EDELMAN]

[Apr. 2, 2002]
[pp. 17-71]

* * * * *

A I did not seek to analyze the percentage of over-blocking, instead I sought to document numerous specific instances of over-blocking without rendering any particular opinion as to the percentage of over-blocking.

Q When did you conduct the tests?

A My testing began in June of the year 2000 and I completed it in my supplemental report just last month.

Q What specific programs did you analyze?

A I obtained and analyzed the most recent versions available at the time of my testing of Cyber Patrol, N2H2, Smart Filter, and Web Sense.

Q Did you use trial versions of those programs?

A I did not. I used the full commercial versions of the programs purchased for me provided to me by counsel for the plaintiffs.

Q How did you install the programs?

A I installed each of the programs on a separate windows 2000 installation, on a separate windows 2000 server.

Q And could you please now refer to Plaintiff's Exhibit 121, page four of that exhibit? First of all, tell us what that exhibit is?

A This exhibit is my expert report.

Q Does page four list the categories in which you enabled the programs to block?

A It does.

Q And can you just briefly summarize those for the products?

A Sure, for Cyber Patrol I configured the product to block content characterized by that program as adult sexually explicit. For N2H2 I configured the programs to block adults only nudity, pornography and sex, with acceptance engaged as indicated on page four. For Smart Filter, sex, nudity, mature and extreme, for Web Sense adult content nudity and sex. Those were the

only categories that I engaged for blocking for those four programs.

Q And how else did you configured the programs if at all?

A By enlarge I left the programs in their default configurations.

Q Now, you said that your purpose was to document specific instances of over-blocking, what do you mean by over-blocking?

A By over-blocking, I mean to describe the phenomenon, whereby internet blocking programs prevent access to web sites that are not consistent with the category definitions as written by the respective blocking programs for the categories for which blocking has been requested.

Q And how did you go about documenting specific instances of over-blocking by the programs?

A In order to document specific instances of over-blocking I first needed to establish a universe, a list of potential web pages that might be over-blocked and I did that by going to the internet directory service Yahoo!.

Q How does Yahoo! categorize sites?

A Yahoo! categorizes web sites into a hiarchial system devised by it's editorial staff.

For example, Yahoo! might place the web site for the U.S. Federal Court in Government, United States Government Courts, Federal Courts, and then you

would see a link to United States Federal Courts. It classifies some portion of the internet in this hiarchial system.

Q And how did you use Yahoo! to compile your data base of sites to be tested?

A I wrote a program that viewed ever category page within the Yahoo! directory, of which there are as I recall some tens of thousands, and retrieved each web site listed in each of those category pages.

In that way I was able to obtain a full listing of all of the web pages classified by the Yahoo! directory.

Q Why did you use Yahoo!?

A Yahoo! is a well known and generally well respected internet directory. Many internet users go there in order to find content on the web.

It was helpful to me in that it provided a reasonably large list of specific web pages that might be subject to over-blocking.

Q Did you also test additional web pages, other than the ones you obtained from the Yahoo! directory?

A I did.

Q And what were those?

A I'm aware that no single internet search engine manages to classify all web pages on the internet. The internet is just too big and that's too hard a job. For that reason I thought it was important to add some additional pages not classified by Yahoo!.

I used a feature in another search engine Goggle called what's related.

Q And what is the what's related feature do?

A The what's related feature when given a URL to particular web page returns a list of another set of web pages that are according to Goggle in some way similar and so in that way by feeding it a list of some hundreds or thousands or URLs from Yahoo! I would be able to obtain some thousands or perhaps, tens of thousands of additional URLs again to be tested for possible over-blocking.

Q Other than the Goggle and the Yahoo! sites did you test any additional sites?

A I did test the sites of the plaintiffs, in this case.

Q You mean the plaintiffs' who are web sites?

A Those plaintiffs'—

JUDGE BECKER: The main plaintiffs here.

THE WITNESS: —that have web site. That's right.

BY MS. BEESON:

Q How—do you know approximately the size of the list of web pages that you tested?

A In total I tested approximately 500,000 distinct web pages.

Q And once you had compiled this data base of site how did you test them?

A I wrote a program that over the course of some weeks or perhaps even months attempted to access each of these web pages through internet access restricted by each of the four blocking programs configured as previously discussed.

The program kept track of which pages it was able to access and which it was denied access to as a result of the configuration of the blocking programs.

JUDGE BECKER: You had to be present at your computer at all times while this was going on?

THE WITNESS: I certainly did not. I was asleep—

JUDGE BECKER: You did not.

THE WITNESS: —for the vast majority of the time I suppose. Instead the program did the work and maintained log files that told me the results of the work.

JUDGE BECKER: I see, so you got print outs?

THE WITNESS: I never actually printed them, but the equivalent of print outs.

JUDGE BECKER: So you showed them on the screen?

THE WITNESS: That's right.

JUDGE BECKER: I see, so they made log files and you looked at them on the screen?

THE WITNESS: That's correct.

JUDGE FULLAM: But we can't cross-examine your computer program, can they?

THE WITNESS: You can cross-examine me, and if I did the procedure properly the results of the procedure are ultimately in appendices to my expert report.

JUDGE BECKER: How many hours did the computer—this was more than one computer I take it?

THE WITNESS: There were several separate computers doing this report.

JUDGE BECKER: How many hours did the computers have to work even if Edelman slept, how many hours did the computers have to work to go through these half a million pages?

THE WITNESS: It would take in general on the order of approximately three weeks of non stop computer time, so perhaps on the order of 700 to 800 computer hours to process the entire half million list through one of the internet blocking programs.

So, we're talking about several thousand hours of computer time.

JUDGE BECKER: But you were able to set this up so it could do it while you were sleeping?

THE WITNESS: Right, I could be out of the country while it was doing this work.

BY MS. BEESON:

Q Did you periodically check the computer programs to ensure that they were functioning properly?

A I certainly did. I found it important to verify that the systems were operating properly, each morning when I woke up, and I found it often entertaining to find that nights examples of over-blocking.

Q Did you document every web page that found to be blocked by the programs?

A I did not.

Q Did you actually exclude some of the web pages that you found?

A I did.

Q And how did you do that?

A My goal was to document not just instances of blocking, but instances of over-blocking, which is to say, if a web page was blocked but the web page actually contained sexually explicit content, that would not be a helpful thing for me to tell the Court about today.

Instead, I needed to prepare a list only, to the extent possible, of web pages that were blocked but that did not, in fact, contain sexually explicit content. Certain of the Yahoo! categories were not helpful for this reason.

For example, if Yahoo! has a category like business and economy, entertainment, sex entertainment, adult entertainment, that would be a category that I would expect not to be helpful to me in documenting instances of over-blocking, and I would exclude all of the pages that I found to be blocked from that category because it was almost certain to me that any page that Yahoo! said was adult entertainment would not be a good example of over-blocking.

Q Did you exclude site in any other way?

JUDGE BECKER: Did you make a determination as to over-blocking as you have described it simply from the logs or did you have to visually inspect the site?

THE WITNESS: I ultimately made what you might call probabilistic judgment as to over-blocking, which is to say I was aware that most sites in Yahoo!'s adult entertainment category would not be examples of over-blocking. And I, therefore, removed—

JUDGE BECKER: You mean that they would be examples of proper blocking?

THE WITNESS: That's right, they would be examples of proper blocking, I would expect.

So I would remove all of those web pages immediately.

BY MS. BEESON:

Q And so you removed the web pages, though, without actually checking to see whether contained sexually explicit content?

A Without looking at them. I had no interest in looking at hundreds of pages of sexually explicit—

JUDGE FULLAM: How about the others?

THE WITNESS: The others were sent in part to two of the librarian experts in this case, Ann Lipow and Michael Ryan—

BY MS. BEESON:

Q I'm sorry—go ahead and answer. I think Judge Fullam may have been asking you a different question.

MS. BEESON: Were you asking about the other exclusions, Your Honor?

JUDGE FULLAM: The question was—somebody asked him how he determined, did he look at the web pages, and he told us the ones he didn't look at. I want to know if he looked at other web pages.

MS. BEESON: That's right. Sure.

BY MS. BEESON:

Q Go ahead, then.

A Sure. I did look at many of the other web pages. In general, my purpose in looking at them was to verify that my procedure was more or less on track. And, indeed, if I found a page within Yahoo!'s government hierarchy that was blocked by an internet blocking program, there would be good reason to investigate.

After all, if the page is categorized by Yahoo! as governments, United States, Federal Government, U.S. Courts, but it's classified by N2H2 as pornography, there may be something of interest here. If Yahoo! says it's a U.S. Court and N2H2 says it's pornography, that's an interesting divergence.

Q And did you also exclude other sites from your database?

A I did exclude certain other sites.

Q And what were those?

A I excluded any site that Google placed in the adult hierarchy of its directory, again because sites that Google said were adults were not likely to be convincing or helpful examples of over-blocking. And I further excluded certain specific web sites provided to me on a list by counsel for the plaintiffs.

Q Are all of the web pages —

JUDGE BECKER: What did the log look like, or what did the log say? Could you draw us a—if you don't have it, could you draw us a typical log entry?

THE WITNESS: I think I can read one to you easily.

JUDGE BECKER: Well, that would be fine.

THE WITNESS: So the logs were quite simple, they were ordinary text files with a number of lines, each line containing two pieces of information. First it would contain the URL that was tested. For example, it might say http://www.sexybloomers.com.

And then it would contain an indication in a certain sort of a code, but still a clear and unambiguous indication as to whether that site was able to be retrieved through a particular blocking program, or whether access to that site was prevented by the internet blocking program.

So in the case of sexybloomers, it might tell me access had been prevented to this flower store as it turns out that it just happens to be called sexybloomers.

The log itself is then a text file that I ultimately reprocess and reformat for the Court in Appendices A and B which will—

JUDGE BECKER: So how did you determine that sexybloomers—sexybloomers' web page was for a flower store and not for some explicit magazine, sexually explicit magazine?

THE WITNESS: Certainly the Yahoo! directory classification would be helpful in that regard if Yahoo! places it in business and economy, retail, flower stores, Michigan, Ann Arbor, Michigan, Sexy Bloomers Flower Store, that's a helpful piece of information.

JUDGE FULLAM: Does anybody look at the site, the page?

THE WITNESS: The sites were reviewed in several different ways. And I will tell you about each in turn.

First, a number of the sites, some 400 odd sites were reviewed by two librarians retained by the plaintiffs, Ann Lipow and Michael Ryan who reviewed each of those 400 sites in a particular way with what I take to be a very rigorous standard for appropriateness for use in one of their libraries.

Secondly, Joe James, who you heard from last week, reviewed a substantial portion of my resulting 6,777 distinct sites, and he, with the help of some of his students, was able to determine the number of those sites via probabilistic inference that, in fact, were examples for over-blocking.

Finally, I looked through many of the sites myself, knowing that these other experts would be looking at

large numbers of the sites. It was less important for me, not being a librarian in any case, to make a judgment as to whether these were examples of over-blocking. But I did come to the conclusion that many of the sites for which I documented the fact of blocking were, in fact, examples of over-blocking.

BY MS. BEESON:

Q If you could look now at plaintiffs' Exhibit 121, page 11, and explain to the Court what the table at the very bottom of the page shows?

A I documented a total of 6,777 distinct web pages, each of which was blocked by at least one of the four blocking programs tested, N2H2, Smart Filter, Cyber Patrol, and Web Sense.

The numbers in the right column there under the heading Total are the number of specific web pages of those 6,777 that were found to be blocked by the corresponding programs. For example, you can see that N2H2 was found to block 4,961 of the web sites on my list.

Q And if you could now look at page 12 of that same exhibit and identify the table at the bottom of the page?

A Some of the web pages on my list were blocked by multiple internet blocking programs. This table reports how many of those specific sites were blocked by multiple programs.

For example, you see that 1,287 of the URLs on my list were blocked by exactly two internet blocking programs in my test.

Q How did you record the content on the web pages that you found to be blocked?

A I used a commercial archival program called Teleport Exec in order to make a copy of the web page as it stood within, in general, 72 hours after I verified that each page was blocked.

So the procedure was as follows: First, I would use my automated testing system in order to verify that each page was once again blocked. I tested each of these pages in my appendices multiple times, and a final day, as I recall, on approximately September 15th, I went through the whole list and made sure that they were all still blocked.

Then, within three days of that time, I used the Teleport Exec archival program to make a digital copy of the respective web pages as they stood at that time.

Q Could you please now refer to plaintiffs' Exhibit 122 and 123?

A These are CD ROMs that give digital copies of the lists of sites that I found to be wrongly blocked, as well as copies of the archives of those sites as they stood immediately after I verified them to be blocked.

Q How do you use the CD?

A If you put one of these CDs into an ordinary computer running Microsoft Windows, my apologies to those who use MACs or something else. A web browser will load automatically, with a table of contents of the information available on that site. I'm sorry, on that CD.

If you click through to, for example, the version of Appendix A on the first CD, Exhibit 122, you will be able to view the archives of the web sites listed on Appendix A.

Q If you could now refer to plaintiffs' Exhibit 124 and tell the Court what that is?

A This is the table of contents page that loads automatically when you insert the first CD into a computer.

JUDGE BECKER: This is a printout of it?

THE WITNESS: That's right, it's a printout of that page.

BY MS. BEESON:

Q And if you could turn to the next page of that exhibit and explain what that is?

Actually, I'm sorry, if we could now go to the fourth page which at the very top in the right-hand corner says page 1 of 56.

JUDGE FULLAM: Page 1 of 56.

JUDGE BECKER: Page 1 of 56?

JUDGE FULLAM: At the top it says that.

THE WITNESS: This is a printout of one of the web pages available on the first CD appendixed to my report.

BY MS. BEESON:

Q And what is this entire list, this pages 1 though 56?

A These 56 pages given information about a particular subset of the list of web pages that I found to be wrongly blocked.

Q And are these the web pages that you sent to Ann Lipow and Michael Ryan?

A They are.

Q Okay. If you could just go down to the fifth entry which says Aberdeen Independent, and we're just going to walk through and explain to the Court what each of these entries is.

What does that first line mean, the one that says number five, Aberdeen Independent?

A The first line there gives the title of the web page at issue as provided by the author of that web page in the web page. It also gives an automatically generated number, that's the number preceded by the pound sign, that's produced by my database. It's really not of any particular interest to the Court.

Q What does the second line of the entry indicate?

A The second line provides the URL to the web page at issue in this number five, the URL for the Aberdeen Independent.

Q And what happens if you're using the CD and you click on that link?

A If you have this CD in your computer and you click on the link that says aberdeenindy.co.uk, the resulting image in your web browser will be the web page of the Aberdeen Independent as it stood within 72 hours after a final determination that that web page was blocked.

Q So just to be clear, you will be looking at the archived copy of the web site as opposed to the current version?

A That's right. You will be looking at content retrieved from the CD which reflects the site as it stood in September of 2201. It will not be content retrieved from that site's web server as it stands now.

Q And there's also some text on that same second line that says Current Web Version. What does that show?

A The link entitled Current Web Version will allow you to see the page as it stands now should you be so inclined.

Q So what will actually happen if you click on that text and you have the CD open?

A If you click on the link entitled Current Web Version, the current version of that page will be retrieved from that page's web server on the internet. So if your computer in fact has a connection to the internet, you will be able to view that page as it stands at this time.

Q What does the third line tell us, that begins Blocked by?

A The third line indicates the specific blocking programs that were found to constrain access to the given web page as well as the substantive categories for which access was prevented, and—

JUDGE BARTLE: What are the dates there? Are they the three dates when you tried it and blocked all three times?

THE WITNESS: The dates listed on the blocked by line are dates in which the page was tested and found to be blocked by the given program.

JUDGE BARTLE: Three times.

THE WITNESS: For some sites, I tested more than three times; for a few, as few as one. But in general, the vast majority, I would say 98 percent or more, were tested at least two times. And many of them more than that, as you see from just looking through this first page.

BY MS. BEESON:

Q And in this entry, the number five, it shows that the site was blocked by just one product, but do you also indicate it if it's blocked by more than one?

For example, if you look up at number three in the blocked by line.

A Yes. If the site was blocked by more than one product, the blocked by line would expand perhaps even to multiple lines if needed.

For example, you can see that the Rewind classic rock band was blocked by, in fact, each of N2H2, Smart

Filter, Cyber Patrol, and Web Sense on a large variety of days, some three or four distinct days.

Q Okay. Now going back to example number five, just for consistency, the next line that says Yahoo!, what does that tell you about the site?

A The next section entitled Yahoo! Gives, perhaps on several lines when needed, the one or several Yahoo! categories in which that URL was found to be placed. This is helpful in getting a sense of what kind of content the page most likely contains.

If you think Yahoo! was right about the page's contents, then you can look at this section and see that the Aberdeen Independent is probably a newspaper in the United Kingdom.

Q What does the next section that begins Google tell the Court?

A Google provides an electronic directory service much like Yahoo!. This is not Google's primary function. Google is primarily a search engine, but they do also offer a directory with the hierarchical classification.

When they classify one of the URLs listed in my appendices here, I provide that classification in the line preceded with text Google.

Q And what is the final line of text in that entry for number five?

A Some web pages provide a brief description text, again in a designated portion of the web page that's not ordinarily viewed by web browsers. I retrieved that

contents when it was available and included it as the final section in each record in the appendix here.

JUDGE BARTLE: Well, did it turn out to be a Scottish newspaper?

THE WITNESS: I am certain that this turned out to be a Scottish newspaper, yes.

BY MS. BEESON:

Q If the entry for a particular site does not include the Google information and the textual information at the bottom, what does that mean?

A If the page does not include the Google director classification, then the proper inference is that at least as of the time of my retrieval of this information in September and October of 2001, Google did not classify that URL.

If the page does not include a description, then similarly the description section at the bottom of each reference here in the appendix would also be omitted.

Q Just to be clear again, both the information in the final line of some of these entries and the information on the very first line is information provided by the publisher of the web site itself, is that right?

A That's correct.

Q Okay. Referring back to the CDs for a moment. What is the distinction between plaintiffs' Exhibit 122 and 123, the two different CDs?

A It was thought to be desirable to the extent possible to archive not only the specific web page that I

had found to be blocked, but a number of the other web pages that are linked from that page.

For example, had I found this Court's web site at uscourts.gov to be blocked, you might want me to archive not just the front page that I had verified to be blocked, but all of the linked pages in order to verify should you be so inclined at some later date that none of those linked pages contained any sexually explicit content either.

However, it turns out that archiving such a large number of pages takes quite a bit of disk space and it would be infeasible to archive six or 7,000 web pages along with all of the linked pages.

For that reason, we chose a subset, these 400-odd pages listed in Appendix A, for which we've archived or attempted to archive all of the linked pages. And for the remaining 6,300-odd sites, we archived only the specific page for which blocking was verified.

Q So for plaintiffs' Exhibit 122, which was also Appendix A to your report, there is a fuller archive of the sites on that disk than there are plaintiffs' 123?

A That's right. The web pages listed in Appendix A are in general archived along with reasonable or a large number of their linked pages, whereas those pages archived on Appendix B on the second CD are archived only in specific pages that were found to be blocked.

Q And when you say you archived the links to the sites on Appendix A, you just mean the internal links to the site, is that right?

A That's right. I mean only the links to other pages on the same web server, in fact in nearby portions of the same web server, not links, for example, to entirely separate web sites hosted elsewhere.

Q Was all of the content on the pages successfully archived?

A Unfortunately it wasn't. It turned out to be a difficult job even for a reasonably expensive and sophisticated commercial program like Teleport Exec to properly archive the way a web page appears in your web browser.

It's unfortunate that this is such a hard job, but the program did not succeed in doing it perfectly in all instances. However, in the vast majority of instances, it did capture an intelligible archive that provides a good representation of how the page stood at the time of blocking.

Q I believe you testified that you sent some of the information to Dr. Joseph James, too. Could you tell us specifically what information you sent to Dr. James?

A I sent Dr. James a listing of all of the specific web pages that I had found to be blocked. I sent him just the URLs of those web pages in an Excel file as it turns out.

Unfortunately, in sending it, I removed three of the URLs from it accidentally and added one more, so there's a very, very small divergence that's of no particular significance ultimately.

Q I would like to now refer you to plaintiffs' Exhibits 165 through 169.

JUDGE BECKER: Which volume is that in?

MS. BEESON: It's actually —I've got some folders for you, Your Honor.

JUDGE BECKER: Okay.

(Pause in proceedings.)

BY MS. BEESON:

Q Mr. Edelman, I believe you testified earlier that you did personally review the content of some of the sites that you documented. Can you tell us again about how many sites you reviewed personally?

A I reviewed all of the sites listed in Appendix A, and that's some 400-odd sites. And additionally, I reviewed several hundred of the sites from Appendix B.

Q Could you now look at these exhibits, plaintiffs' Exhibit 165 through 169 and tell the Court what these are?

A Sure. The first plaintiffs' exhibit, 165, is a web page entitled Learn to Play Piano and Write Songs in Three Lessons. I see from the bottom of the printout this comes from a server called helmbros.com.

My notes reflect that it was previously blocked in my initial testing of 2001 by Web Sense in the category of sex. And it is now blocked, according to my retesting of March 2002, by N2H2.

And as I look at it, at least at this particular page, I can note that it doesn't seem to include any sex or any sexually explicit content. It seems to contain only song-

writing and piano-playing lessons. So it would be, it seems to me, a good example of over-blocking.

Q And are these exhibits printouts from the archived version of the web site, and if so, how do we know that?

A These are exhibits from the archived version of the web site. And we know that because looking at the bottom of the printouts, you can see that the URL references there are not the ordinary URL references that you would see if you printed the web pages from the internet, but rather references to a file stored on an M drive, which could well be—almost certainly is because of this pattern of the site's directory followed by the directory of the web server name. This is a file from the second CD, for the appendix to my initial report.

JUDGE BECKER: What's the M drive? What's meant by the M drive?

THE WITNESS: The M drive is one possible convention for the CD ROM drive in a personal computer. So it reflects retrieval of content from an ordinary CD ROM disk.

BY MS. BEESON:

Q Could you tell us what you found out about plaintiffs' Exhibit 166 and how it was blocked?

A Plaintiffs' Exhibit 166 is a page entitled Lakewood High Alumni. My notes reflect that it was previously blocked by N2H2 for being in the category of nudity and it is still blocked by N2H2.

Q What about plaintiffs' 167?

JUDGE BECKER: Do you have an opinion as to why either of these were blocked by N2H2? Is there some flaw in the N2H2 system or—I mean, these are plainly not sexually explicit or what have you.

THE WITNESS: These first two seem to be, to our first approximation, randomly blocked. They are not blocked because their address is confusing, say Sexy Bloomers that we discussed previously might have been blocked because its address with the word sexy was confusing.

They're not blocked because their contents are confusing. There's no talk of breasts or breast cancer on the page.

JUDGE FULLAM: But the talk of fingering and frustration is the only thing I could figure out about this one.

THE WITNESS: That is one possibility that some key word on the page triggered erroneous blocking, presumably by a computer. It seems to me unlikely that a human would make this mistake.

Another possibility is that the error is, to a first approximation, random. You heard last week about the possibility of over-blocking on the basis of shared IP address hosting, which is, primarily could be thought of as essentially random from the perspective of most internet users and most content providers.

But just as a result of where your web server happens to be located and what other content is nearby on the internet, the entire neighborhood might be

categorized as pornography by, say, N2H2 even when numerous, in fact most specific pages in that neighborhood are not pornographic.

JUDGE BARTLE: Guilt by association.

THE WITNESS: It would seem to have a certain analogy to guilt by association.

JUDGE BECKER: Mechanically how does that happen. How does the blocking—the filter captures nearby sites as it were or—

THE WITNESS: Here's how it might happen. When you type a URL into your web browser for a page like, for example, helmbros.com, your web browser initially asks an internet server in fact one maintained by the internet corporation for assigned names and numbers that I spoke of previously, or by one of its delegates and asks to convert that page name, helmbros.com into a numeric identifier, an IP address, these are the dotted numbers one dot, two dot. three dot, four dot, that you heard about last week.

Those numbers reflect particular servers that might host many domain names. For example, helmbros might use the server one dot, two dot, three dot, four and a pornographic site, a site offering adult entertainment content, might in principle use that same server.

If, for example, the server was a server available for commercial hire for $30 a month, you could put your site on that server also, which turns out to be a generally accepted practice used by many individuals in many small businesses.

In that case, if the blocking program prevented access to that server on the basis of its IP address, then it would necessarily prevent access to all other content hosted on that same server.

JUDGE BARTLE: Which could be thousands of—

THE WITNESS: Thousands, even tens of thousands or millions of pages.

JUDGE BECKER: So any filtering system that is structured or configured that way ia destined to block—to over-block?

THE WITNESS: Any filtering system, any blocking system that prevents access on the basis of the web servers IP address is certain to produce large amounts of over-blocking of precisely this sort, that's correct.

JUDGE BARTLE: Is that what these filtering systems do, do they all block on that basis?

THE WITNESS: I have reviewed the technical documentation and the advertising of the four programs we've spoken about, and each of them reflects in its documentation the ability to block pages both on the basis of their IP address and on the basis of the domain name.

JUDGE BARTLE: Well, you say ability, but the question is do they do it?

JUDGE FULLAM: He doesn't know.

JUDGE BARTLE: Certainly the fact that the page is and was blocked seems to me clear evidence that they

must be doing it because I can think of no other sensible, logical reason why this page would be blocked.

Furthermore, I can think of good reasons, economic reasons resulting from their need to make money, their need to economize on the use of staff, keep their staff small, and to keep their sufficient why they might find it helpful to block on the basis of an entire IP address rather than just by domain name.

JUDGE BARTLE: And it would serve the purpose of the customer because you would be sure that pornography or explicitly sexual was block may—may overblock, but at least accomplish the purpose of keeping the pornography off the internet or off the—

THE WITNESS: Off the library for example.

JUDGE BARTLE: Yes.

THE WITNESS: It's two that when you use IP address blocking, you're likely to be somewhat more successful in preventing access to sexually explicit content given a particular fixed amount of staff resources, for example.

JUDGE BARTLE: It's still like throwing out the baby with the bath?

THE WITNESS: It's very efficient to throw out the baby with the bath, that's right.

BY MS. BEESON:

Q Just quickly, Mr. Edelman, if you could refer to plaintiffs'—

JUDGE BECKER: If the blocking was by—

MS. BEESON: I'm sorry.

JUDGE BECKER: —domain name, why wouldn't this have happened?

THE WITNESS: If the blocking were by domain name, then the blocking company would have prevented access only to the particular single or several sexually explicit web pages that might be using this IP address.

The problem though from the perspective of the blocking company, is that there might be several, there might be even a couple dozen, I venture to say there might be a hundred different domain names pointing to a particular web server, and of those, maybe ten or twenty would offer sexually explicit content conceivably on some web servers, such that it might be more convenient from the perspective of the blocking company to block the entire server in one fell swoop rather than having to add 20 different lines for the 20 different domain names.

It's as if I said in a particular area code there are so many different people offering pornographic content, I'll just block the whole area rather than all of the particular different phone numbers in that area code.

JUDGE BARTLE: Just from the economics of the standpoint of the filtering company, they are almost compelled to do this, right?

THE WITNESS: Certainly it seems that it would make their operations quite a bit more efficient. With more resources I'm sure they—

JUDGE BARTLE: It's less profit.

THE WITNESS: —it seems likely they could do better. It wouldn't mean less profit, I would think, to block on a more granular level.

JUDGE BECKER: But why would there be a confusion if they block by domain name? Is that because of similarity or ambiguity in domain names?

THE WITNESS: If they blocked by domain names but a particular provider of sexually explicit content had many domain names, 20 or 30, and it could be hard to find out all of the different domain names that a particular individual has registered just because the internet isn't indexed that way, it becomes a much more difficult undertaking to find out all of the different domain names that host sexually explicit content as against all of the different IP addresses.

JUDGE BECKER: So it would take—

THE WITNESS: There are more domain names out there.

JUDGE BECKER: —visual inspection of each? Would it take visual inspection?

THE WITNESS: I think visual inspection would be required either way, but more visual inspection would be required of more distinct domain names if you were going to block on the basis of domain name rather than on the basis of IP address.

JUDGE BECKER: Yes, Ms. Beeson.

BY MS. BEESON:

Q Mr. Edelman, if you could just briefly summarize for the Court Plaintiffs' Exhibit 167 and how you found it to be blocked?

A Plaintiffs' Exhibit 167 is a bit different actually from the last two we talked about. Like the last two, it was previously found to be blocked in this instance by Cyber Patrol for presence in the adult sexually explicit category.

However, looking at Exhibit 167, it seems to me that it was likely confusing on a key word basis or perhaps on a domain name basis to some automated system, a key word filter more or less, so all the word women in the title of this web page and thought oh, this must be sexually explicit content because it has women in its title.

Now, in fact, I gather this is a sort of trade association for women who are in the cinematography business, making movies or providing technical assistance to those who do make movies.

But the presence of the word women in the page's title and in the page's domain name perhaps triggered some sort of automated system that classified this page as adult sexually explicit by Cyber Patrol which, of course, we see from looking at it, it is not.

Q What about Plaintiffs' Exhibit 168?

A Exhibit 168 is a page provided by Calgary Firefighters Museum. It was blocked, according to my notes, by Cyber Patrol for being adult or sexually explicit, and as I had looked through it, it seems to me

that it is not adult or sexually explicit. It only provides information about the events of the particular Calgary Firefighters Museum.

Q And Plaintiffs' Exhibit 169?

A Exhibit 169 is a web page about some aspect of politics in Uganda. It's about an organization that they say is not a party, it's not a religion, but it's something about political organization in their country.

I am not sure I have read it quite carefully enough to understand completely, and it was blocked by N2H2 for membership in the category of adults only and pornography in my testing of 2001, and is still so classified as of March 2002.

Q Mr. Edelman, after you submitted your initial expert report in October of 2001, did you publish those findings in any way?

A I did. I put the contents of the C Ds on my personal web site at the Berkman's Center at Harvard Law School. I asked staff at the Berkman Center promote the publication of my work on the front page of the Berkman Center in our periodic newsletter and otherwise to students in related classes, and I sent information about my report to mailing lists for which subscribers I thought might well be interested.

I also know that certain mailing lists of librarians forwarded on the announcement of my report to their members.

Q After your initial report, I believe you mentioned previously that you checked again recently to see

whether the sites were still blocked. When was that research conducted?

A It was conducted in March of 2002.

Q And could you refer now to Plaintiffs' Exhibit 126 which I think is the first exhibits, Your Honors, in volume two of the Multnomah binder.

(Pause in proceedings.)

Q And what is that?

A Plaintiffs' Exhibit 126 is my supplemental expert report.

Q And if you could look at page two of that exhibit in the first table at the top of the page, what does that show?

A The table at the top of page two details the number of specific URLs that were previously blocked by each of N2H2, Surf Control and Web Sense, and it further notes the number of URLs that are currently blocked, again of those 6,777 URLs in my appendices by those three programs.

Q And could you look at the table at the bottom of that same page—

JUDGE BECKER: Why did so many of them get unblocked?

THE WITNESS: If I can just describe the second table on this page—

JUDGE BECKER: Okay.

THE WITNESS: —it might make a little bit more sense at that point.

The second table on this page performs the same function as the first with the following exception. In the still blocked column, it now requires that the URLs that are still blocked, be URLs that were blocked by the same program previously. Perhaps I could give a specific example.

If sexybloomers.com was previously blocked by N2H2, then in order for that to be counted towards the total of N2H2 sites that are still blocked, N2H2 must still block that particular site.

If N2H2 comes to block some site that was previously blocked only by Surf Control but not by N2H2, that would not count properly toward the N2H2 still blocked total.

Now, the question was why so many URLs came not to be blocked any longer. Certainly when you look at Surf Control at the second table, you see that Surf Control elected to unblock fully 93 percent of the URLs I previously reported as wrongly blocked by Surf Control.

BY MS. BEESON:

Q Did this—

JUDGE BARTLE: They had word of what you had done?

THE WITNESS: In fact, they had looked at my report in the first 24 hours I recall after I published it. At that point, I was still monitoring every view of the

report that I verified that an employee of Surf Control had actually retrieved my report.

BY MS. BEESON:

Q And just to be clear, Mr. Edelman, I think that that table shows—it distinguishes the URLs reported in appendices A and B, is that right?

A It does.

Q And what are the results for the Surf Control correction rate for the URLs in Appendix B which are the URLs sent to Dr. Janes?

A For the URLs—first, as I recall, Dr. Janes received both appendices A and Appendix B.

Q That's right, I'm sorry.

A So for Dr. Janes I suppose the proper column to compare is the percent still blocked column under the heading total, the right most column.

Q That's right.

A And here we see that 7.16 percent of the sites previously blocked by Surf Control were still blocked by Surf Control in March of this year which leads me to conclude that the other 93 percent were no longer still blocked, which must have acquired some affirmative change on Surf Control's part, which is to say they decided to change the configuration of their program, so as not to block the other 93 percent of sites that I initially said were wrongly blocked.

Q Did you reach any other conclusions based on your supplemental research about the ability of the programs to correct over-blocking?

A I did.

Q And what are those conclusions?

A I was surprised to see that N2H2 and Web Sense had not corrected the majority of the over-blocking that I had reported in my initial report and its appendices.

Q Why were you surprised?

A I had published my report to the public, I publicized the publication of the report on the internet on a number of mailing lists that I would expect staff of those companies to find errata, errors of their programs.

So it was puzzling to me, surprising to me that in fully seven months between when I published my report listing thousands of errors of their programs and my retesting in March, in that seven-month period they did not, were not able to, or were not inclined to correct the errors detailed in my initial report.

Q What conclusions did you reach overall about the amount of over-blocking caused by the four programs you analyzed?

A I concluded that there is significant, substantial over-blocking caused by these four programs when configured as I configured them.

Q And why do you believe that you documented significant over-blocking?

Q First, a list of some six to 7,000 distinct pages from many many distinct web servers, distinct domains, that alone to me is a significant list. That's thousands and thousands of pages which is significant and substantial.

Furthermore I am certain that the way I proceeded in conducting this research excluded the vast majority of those sites that are wrongly blocked. For example, I began only with those specific URLs that were in Yahoo! or that Google reported to me as related, a sample of only half a million URLs out of billions, hundred of billions perhaps of URLs on the internet.

I began with only a tiny tiny portion of the internet and found thousands of examples of over-blocking in that portion. Had I begun with a larger portion of the internet, I am sure I would have found more samples of over-blocking.

Furthermore, my criteria for inclusion in these lists were, in some ways, stringent. I needed to verify that the site was blocked on multiple occasions, and I needed to be able to archive the site within 72 hours after the final occasion of testing.

If I was unable to archive it, I would have to omit that site from reporting in my appendices here, which is to say I excluded many hundreds or thousands of additional sites on the basis of their unreachability when I wanted to archive them, or on the basis of their failure to continue to be over-blocked even though they were over-blocked at one point in my testing.

Q And just to clarify, when you configured the products, you did not engage all of the possible categories to block, did you?

A That's correct. I configured them only to block the specific categories listed on page four of my initial report, and I understand some libraries might configured their blocking software to block additional categories.

Q Did you reach any conclusion about the persistence of over-blocking?

A I did.

Q What is that?

JUDGE BECKER: If you had configured to block tasteless and gross which is one of the categories of one of the—would that have been more difficult to determine over-blocking with respect to—

THE WITNESS: My methods would have been perfectly able, I believe, to produce a list of a large number of web pages that were blocked under any, all, or any combination of the categories present in the blocking software.

The actual judgment as to whether a page met the definition of tasteless or gross, would I suppose turn on how precise the definition of tasteless or gross is, and some of the definitions as written by the staff of the blocking companies are, in my experience, more precise than others, which is to say that there are some that I found bordering—to border on unintelligible or unclear.

Luckily the ones at issue for my report by and large were clear enough to me that I was able to make a determination in general.

BY MS. BEESON:

Q What have you observed generally about the various types of over-blocking?

A I have observed that there is significant over-—blocking in each of the types over-blocking identified by Mr. Nunberg last week.

Q Now, I want to just ask a few questions about the general features of blocking programs.

We have heard some testimony about how some of the products provide the ability to check a particular URL to see whether that product blocks a URL and they have that feature on their web site. Are you aware of that feature generally?

A I am.

Q Do you know whether Web Sense has such a feature?

A Web Sense does have such a feature, however the feature on Web Sense is different from the feature on the sites that the other three blocking programs in what I think may be an important respect.

In order to use the Web Sense feature on their web site to determine free of charge whether a particular web page is classified by the Web Sense blocking program, you must establish an account with Web Sense wherein your provide them with your name, your

E-mail address, your phone number, your organizational affiliation, whether or not you're currently a Web Sense customer, whether you evaluating Web Sense, whether you only seek to determine how Web Sense classifies a site that you operate, or that you are interested in.

Then you must certify to a paragraph of legal text, I'm no lawyer but I read the text and think I understood at least a portion of it, in which you certify that you will not transfer your user name and password assigned to you Web Sense, that you will not use this information from Web Sense to disparage the product or criticize its quality.

That you will use the information only for the purpose of finding out and not even telling anyone, but just finding out for your own personal knowledge how Web Sense classifies a particular URL.

You must agree to all of that in order to use the feature on Web Sense's site.

JUDGE BECKER: When you say you must read just click yes?

THE WITNESS: You must read the text and say I certify —

JUDGE BECKER: I certify.

THE WITNESS: —this is true and press the button that says I agree, yes.

JUDGE FULLAM: You think that is an important distinction?

THE WITNESS: It caught my eye because I wouldn't haven't been able to make that certification honestly or truthfully had I needed to use that particular feature on the Web Sense site.

JUDGE FULLAM: They don't require the certification be made under oath though, do they?

THE WITNESS: I suppose they don't. I should get some advise from the three of you as to whether or not I could properly make the certification in that case.

BY MS. BEESON:

Q Can blocking programs block just sexually explicit content on web based discussion groups or chat groups?

A They cannot.

Q Why not? What can they do?

A They could in general block the entirety of a given discussion group preventing access to an entire discussion on a given topic, but they could not in general prevent access to a particular single message in that discussion group.

And if there were a particular image of interest at issue in a particular message in general they would have no way to block only that particular image without blocking the rest of the message or other messages in that same forum.

Q Can blocking programs block just the sexually explicit portions or audio or video content delivered over the web?

A They can't. First, it's difficult to block audio and video content delivered over the web just in the sense that the content is offered—often delivered in proprietary formats that are not as amenable to the sorts of blocking methods used by these blocking programs to restrict web access.

Furthermore, it is especially difficult to block access only to particular portions of an audio or video file. For example, if you managed to find a digital copy of the movie Titanic on the web, that could be a tricky thing to do actually, but if you found a copy of the movie on the web, there would be no way for the blocking software to prevent access to a particular sexually explicit scene in that movie because the movie, if you manage to access it, would be retrieved in its entirety and displayed to you in its entirety.

There is just no way for a blocking program to get in the middle and prevent access to the one possibly sexually explicit scene in that movie.

Q Did you also test the customization features offered by the programs?

A I did.

Q And how did you do that?

A I configured each of the programs to block access to a web site that they would not ordinarily have prevented access to, and I further configured each of them to allow access to a web site that they would not ordinarily have prevented access to, and I further configured each of them to allow access to a web site that they ordinarily would prevent access to.

For example, I configured the programs to block access to a particular site at Harvard and to allow access to a particular site at say Playboy.

Q What customization features are provided by the program?

A Each of the programs provide some ability to customize the ordinary categorization list provided by that program. For example, if you wanted to add another site to adult sexually explicit category within Cyber Patrol, you could certainly do that.

Q What level of technical expertise do they require for operations?

A As I reviewed the manuals for these blocking programs and as I reviewed the way that they become installed on a central server that actually performs the act of blocking access to web pages, it seems to me that these programs were targeted at systems administrators of computer networks, your IT guy loosely speaking.

They did not seem to be targeted at librarians in the sense that there was no way, for example, to provide a simplified or customized user interface to the customization features such that a librarian would see only the features of use to the librarian without seeing all of the other features important to an assistant administrator.

JUDGE BECKER: You said that you were able to effect a modification?

THE WITNESS: I was able to.

JUDGE BECKER: That's because of your technical expertise?

THE WITNESS: My technical expertise allowed me to operate the software in the necessary way, and I'm sure some librarians will be perfectly capable of doing so.

But my conclusion after reviewed the programs, after looking at them, testing them on my own computers, reading their manuals is that the authors of the programs intend for a systems administrator, a person who perhaps has some professional certification in the operation of computer networks to do the customization of these programs, as well as to configured them in any other necessary way according to the requirement of the specific installation.

BY MS. BEESON:

Q Are the customization features designed to be operated by a single systems administrator?

A In general the manuals and technical documentation for these programs seem to anticipate that a single systems administrator would configured the programs from a single internet terminal.

Ordinarily the server itself which is to say if you wanted to change the configuration of the blocking server, you would walk over to the blocking server which would perhaps be in a closet in your office. You would sit down at it's console, and use it's screen key board and mouse in order to change it's configuration. They anticipate that one particular person would do that when necessary.

Q Would it be possible to use four multiple systems administrators to grant exceptions using these programs?

A For some of the programs that might be possible. I didn't actually test that and in general their documentation just doesn't speak to the question one way or the other.

I did, however, read the technical documentation of Surf Controls Cyber Patrol product which explicitly speaks to this practice and says that it is a bad idea. They say that it risks completely corrupting the configuration of the blocking server, and it risks rendering the server inoperable and your internet connection then unusable.

In short, they say that it's important not to use multiple simultaneous administrators configuring the server, because if you do that the server might stop working.

JUDGE FULLAM: Is configuring the server the only way that you could override a blocking?

THE WITNESS: Yes, overriding block or customizing a category list is one kind of configuring the server and I can think of now way to override a block other than by configuring customizing the blocking server.

BY MS. BEESON:

Q Assume that a customer—

JUDGE BECKER: So are you—

MS. BEESON: I'm sorry.

JUDGE BECKER: That's all right. Well, we heard testimony from several library mangers about their ability to effect overrides. Are you in effect challenging that testimony saying that they didn't have the capacity or that they would have had to violate the protocols of at least some of the filtering companies if they did so?

THE WITNESS: I haven't read the transcript of that testimony I'm afraid, but I am confident that none of the manuals that I read spoke to this question one way or the other. Which is to say they didn't say you could do it, and they didn't tell you how to do it. Which to me is a pretty clear indication that the authors of the software weren't anticipating that you would do it.

BY MS. BEESON:

Q And Mr. Edelman, just to clarify, you weren't saying that it's not possible to grant exceptions at all, are you?

A Certainly it's possible to grant exceptions. They have been unclear about this.

JUDGE BECKER: Well, if you were the main library manager in Greenville or Tacoma or Westerville Ohio, you would know how to do it?

THE WITNESS: If I were the main library manager I would absolutely certainly be able to grant exceptions.

The question is whether multiple library managers say in distributed branch libraries or on different floors of the library might separately be able to configured

the same blocking server at the same time to make different customizations.

JUDGE FULLAM: Is their distinction between an override which eliminates the block as to all computers from then on, or and one which simply says for this particular customer, this particular terminal for one day only we override?

THE WITNESS: The latter practice while it sounds easy enough and you're certainly able to describe it in a sentence, is not a feature that in my experience is actually included in any of the blocking programs that I reviewed.

JUDGE BECKER: So if you change it you change it for good?

THE WITNESS: You change it one for good, and two for everyone in general. One of the programs that I—

JUDGE BECKER: For everyone you mean in—

THE WITNESS: All terminals in the library.

JUDGE BARTLE: How about in terminals in branch libraries too, or can't you—you would have to do it separately in each of the branches I take it?

THE WITNESS: It would depend on the way your network was designed.

JUDGE BARTLE: So, if someone comes to the librarian and says I want to do bono fide research on pornography and the librarian agrees that what you're doing is bono fide research and the block is overridden then that's going to be overridden for all times. So that

anybody else can come in and get access to that web page.

THE WITNESS: I take you to be depositing the possibility of removing the block on one particular web page, or one particular site.

JUDGE BARTLE: One part one—yes.

THE WITNESS: Right. In most of the programs that I tested in N2H2 in Web Sense and in Smart Filter there is no particular way to customize the blocking list for a single computer terminal even for all times.

In Cyber Patrol it is possible to customize—

JUDGE BARTLE: Yes, but what I'm saying is let's assume the block is overridden and whatever configuration because somebody's doing bono fide research and that's an exception of the law, so that if someone convinces the librarian that he or she is doing that kind of research then the librarian will unblock the blocked material.

So, once that's done because that one individual was doing bono fide research then that whatever is unblocked is going to be unblocked permanently. It's not going to be reblocked after that person finishes he or her research.

THE WITNESS: None of the blocking programs that I tested and for which I reviewed the manuals and other technical documentation provides any notion of an expiring allow.

JUDGE FULLAM: Well, we've heard testimony that some libraries do not have screening for the staff computers. I take it if that's a possibility—

JUDGE BECKER: They don't have filtering.

JUDGE FULLAM: —they don't have filtering on their staff computers and therefore presumably this one time user could be permitted to use the staff computer to get—

THE WITNESS: That would seem to be one possible way to proceed. I don't know whether that would be compliant with the requirements of the law but it certainly seems technically possible.

JUDGE BECKER: Well, I take it that if they reconfigure then they could rereconfigure.

THE WITNESS: That's right. You could have a nightly job for someone to remove all of those customizations, although in fact—

JUDGE BECKER: And then recustomize, is it—

THE WITNESS: I suppose it would be necessary or it might be necessary for compliance with the law to remove the customization as soon as that patron leaves that terminal.

JUDGE BARTLE: That's what I'm saying, you can then.

THE WITNESS: Right. You could, you just would have to make sure you remembered and you weren't—

JUDGE BARTLE: Yes, I understand.

THE WITNESS: —busy doing something else. And there is also this important constraint that we discussed previously, wherein, remote administration by multiple librarians of a single blocking server certainly for Cyber Patrol you better not do it.

JUDGE FULLAM: It's frowned upon.

THE WITNESS: The manual is quite clear.

JUDGE FULLAM: Okay.

BY MS. BEESON:

Q Do any of the programs provide the ability to keep track of the exceptions granted, the exceptions granted to particular users and the reasons for granting those exceptions?

A None of the blocking programs that I tested has any understanding of the reasons why you decided to unblock the particular site, nor does nay of them have any particular method of producing an audit or other report of exceptions granted, so—

JUDGE BECKER: So, they had to do it manually?

THE WITNESS: They would need to keep some separate set of records I would think.

BY MS. BEESON:

Q If you could just briefly now, Mr. Edelman look at Plaintiff's Exhibit 125 which is in the first volume. It's the last one I believe, and just identify that for the Court?

JUDGE BARTLE: What page?

MS. BEESON: Just the report overall, Your Honors.

THE WITNESS: This is my rebuttal report.

BY MS. BEESON:

Q Okay. Given your research of blocking programs what is your opinion about whether they are likely to improve significantly in the future?

A I wouldn't think the blocking programs are likely to improve significantly in the future.

Q Why?

A I gather that they're current status reflects the best effort of the companies making these products subject to some significant constraints that they face. Among them the need to make a profit the need to have a reasonable size staff and to use staff that they're capable of hiring and retaining.

JUDGE BECKER: Don't you think Edelman can tell them how to do it?

THE WITNESS: This seems to me a difficult and fundamental problem for all the reasons that Mr. Nunberg explained last week.

JUDGE FULLAM: They used to say that airplanes would never get off the ground.

THE WITNESS: I wouldn't want to take on this job. I don't see myself dropping out of school to write a better program next month.

MS. BEESON: I have nothing further.

JUDGE BECKER: All right. We'll take a ten minute recess, and then we'll let you cross-examine.

(Court stands in recess, 10:41 until 10:56 a.m.)

JUDGE BECKER: Okay. You may cross-examine him, Ms. Bhattacharyya?

MS. BHATTACHARYYA: Thank you, Your Honors.

[CROSS-EXAMINATION]

BY MS. BHATTACHARYYA:

Q Mr. Edelman, your goal in compiling your list of sites was to find sites that had been wrongly blocked because the content of those sites was inconsistent with the filtering category definitions, isn't that right?

A That's correct.

Q No one not you and not any of plaintiff' expert actually looked at the content of the sites on your CDs to determine whether or not they were consistent with the filtering category definitions, isn't that true?

A No, I would not agree with that statement.

Q Dr. James didn't look at those sites in accord with the filtering category—

JUDGE FULLAM: Are you arguing with him or questioning him?

MS. BHATTACHARYYA: I'm questioning him, Your Honors.

JUDGE FULLAM: Will you ask him a question then, please?

BY MS. BHATTACHARYYA:

Q Are you aware of the methodology that Dr. James used to conduct his research?

A Having read his report I am aware of his—

Q And he did—

A —methodology?

A —not use the filtering category definitions as the touchstone for determining whether or not those sites had content consistent with those definitions, did he?

A He did not use that precise standard no.

Q And Dr. Ryan did not use that filtering category definitions to determine whether or not the sites he looked at were consistent with the category definitions, did he?

A He did not.

Q And Ms. Lippow did not use the filtering category definitions to determine whether or not these sites were over-blocking because they contained content inconsistent with the category definitions, did she?

A She did not.

Q And you did not examine every site on your CD to determine whether or not they contained content inconsistent with the filtering category definitions, did you?

A I examined some of the sites on the CDs that are appendices to my report, but I didn't examine all of the sites.

Q In fact you testified earlier that you examined maybe a few hundred of the thousands of the sites listed on your CD, isn't that correct?

A I testified earlier that I reviewed approximately 400 sites from Appendix A and on the order of several hundred from Appendix B which would total I think more like 700 more than a few hundred.

JUDGE BECKER: And what was the conclusion you reached from the visual inspection?

THE WITNESS: I concluded that the vast majority of those sites that I inspected visually were not consistent with the category definitions of the respective blocking programs.

BY MS. BHATTACHARYYA:

Q So, you reviewed approximately ten percent of the sites on those Cds and reached that conclusion, isn't that right?

A That's correct.

* * * * *

[TESTIMONY OF B. EDELMAN]

[Apr. 2, 2002]
[p. 89]

* * * * *

JUDGE FULLAM: Do we have anywhere in either your original report or anywhere else your listing of the sites which you concluded were not in accordance or over-blocked under the company's own standards?

Which ones are they?

THE WITNESS: I reviewed the totality of Appendix A, so certainly we could look at Appendix A and I could tell you that I had, in fact, looked at every single site on that list.

For the longer Appendix B, I don't have records of which particular sites I looked at and so I would be unable to tell you and you cannot know which of the sites I looked at.

JUDGE FULLAM: But both Appendix A and Appendix B are sites which you concluded were over-blocked?

THE WITNESS: I concluded that a large portion of those sites, a majority were over-blocked. I didn't conclude, I absolutely did not conclude that every one of them is an example of over-blocking.

I am certain that there are sites with sexually explicit content, especially on Appendix B, I am certain that there are sites that are consistent with the block-

ing company's own category definitions on Appendix B in particular.

* * * * *

[TESTIMONY OF B. EDELMAN]

[Apr. 2, 2002]
[pp. 100-107]

[CROSS-EXAMINATION]

* * * * *

BY MS. BHATTACHARYYA:

Q Mr. Edelman, you testified that you ran 500,000 sites with these filters, is that correct?

A Approximately 500.

Q And of those 500,000 sites, you were able to identify the 6,000-some plus on your exhibit that were blocked, is that right?

A There were certainly plenty of other sites that were also blocked, but my exhibits report a portion of those sites that I found to be blocked.

Q The vast majority of the half a million sites that you ran through the filter were not blocked, isn't that true?

A I would agree that the majority of sites that I ran through the filter were not blocked.

JUDGE BECKER: And the only ones that you listed as blocked were ones that were blocked because of these categories, is that right?

THE WITNESS: The only URLs that I reported in Appendices A and B were those that were blocked by the specific categories listed on page four of my report.

JUDGE BECKER: Categories that you identified before.

JUDGE BARTLE: The four.

THE WITNESS: That's right. The categories on page four, Cyber Patrol, adult sexually explicit; N2H2, adults only nudity, pornography and sex, and so forth.

BY MS. BHATTACHARYYA:

Q And based on finding some 6,777 or so sites that were blocked, you concluded in your report that it's virtually certain that there are a large number of other sites on the internet that are also wrongly blocked, isn't that true?

A I concluded that there were a large number of other pages on the internet that were wrongly blocked on that basis, that's correct.

Q And that conclusion is not supported by any statistical inference, isn't that true?

A It's supported by a logical inference, but I wouldn't characterize it as a statistical inference.

Q You characterized it on direct as a probabilistic judgment, is that fair?

A Sure. I would say that it's a probabilistic judgment in the sense that I reviewed some subset of the world and made a judgment about the rest of the world which is—

Q Now—I'm sorry.

A Which is to me a probabilistic sort of a judgment.

Q Now, you corrected me a moment ago when I said sites and not pages, is that right?

A I did note a distinction, that's true.

Q When you turn to page 14 of your expert report, which is plaintiffs' Exhibit 121—

(Pause in proceedings.)

JUDGE FULLAM: What page are we on?

JUDGE BECKER: Fourteen.

MS. BHATTACHARYYA: It's page 14, Your Honor.

(Pause in proceedings.)

BY MS. BHATTACHARYYA:

Q This statement at the top of the page, "Thus, it is virtually certain that my research details only a small portion of sites that are wrongly blocked by the programs I have tested," that is your conclusion, is that right?

A That is certainly a conclusion that I reached on the basis of this work.

Q And that conclusion, in fact, refers to sites and not pages, is that true?

A It does.

Q This testing also indicates that—this statement also indicates that your testing began with a small sample of sites on the web. Is that fair? That's what the statement says.

A It does say that.

Q You didn't, in fact, select a statistically significant sample of any kind from the web, did you?

A I don't even know what it would mean to select a statistically significant sample of —

JUDGE BECKER: Have you had courses in statistics?

THE WITNESS: I have.

BY MS. BHATTACHARYYA:

Q You picked and chose the sites that went into your 500,000 site list, didn't you?

A I wouldn't say I picked and chose in the traditional way of choosing by hand. I chose, to begin with, the entirety of Yahoo!, for example.

Q And you eliminated from your list of sites that you ran through the filters those sites that were likely to be pornographic, isn't that true?

A I eliminated certain sites that I believed were likely to contain adult or sexually explicit content.

Q You eliminated all of the sites that Google categorizes adult, isn't that true?

A I did.

Q And you also received both general and specific direction from plaintiffs' counsel as to which sides to include on your list of 500,000, isn't that true?

A As to which sites to include in the 500,000, no, I suppose I didn't. I included all of Yahoo! and I don't know that counsel for the plaintiffs provided any particular guidance beyond that.

Q On page five of your report at the end of the first paragraph you state, "Counsel for the plaintiffs provided guidance both general and specific as to sites to be included and excluded from my testing."

Is that not a correct characterization?

A It's true that counsel for the plaintiffs provided general guidance as to sites to be included, and they provided both general and specific guidance as to sites to be excluded.

I can't recall any instance in which they provided specific guidance as to sites to be included, except for guidance that I should include the specific plaintiff sites, the names plaintiffs in this case.

JUDGE FULLAM: And that's fairly specific, isn't it?

BY MS. BHATTACHARYYA:

Q In fact, Mr. Edelman, you testified that with respect to Appendix A you reviewed all of the samples in that site, is that right?

JUDGE FULLAM: Yes, he said that several times.

BY MS. BHATTACHARYYA:

Q And Appendix A was assembled by counsel for the plaintiffs, isn't that true?

A Counsel for the plaintiffs selected the particular sites to be placed on Appendix A.

Q And Appendix A was the set-up sites that you then split into two pieces and farmed out to Dr. Ryan and Ms. Lipow to look at, is that right?

A It's correct that I sent the sites from Appendix A to Dr. Ryan and Ms. Lipow.

Q And those were the sites hand selected by plaintiffs' counsel?

A That's correct.

(Pause in proceedings.)

Q You also had plaintiffs' counsel review drafts of the sites listed in Appendix B, didn't you?

A I did.

Q And on occasion, plaintiffs' counsel advised you to remove certain sites from Appendix B, didn't they?

A They did.

Q And you also removed, as I think you testified, certain categories of sites based on the Yahoo! or Google characterizations from Appendix B, isn't that right?

A I did.

Q And plaintiffs' counsel provided you guidance with respect to which categories of sites to remove from Appendix B, isn't that true?

A They did.

Q You don't recall which categories you removed, isn't that fair?

A By and large, I do not.

Q And you don't recall how many sites you may have removed at the direction of plaintiffs' counsel, do you?

A I don't.

Q In fact, it would be fairly difficult to duplicate your procedure, wouldn't it?

A It would be difficult to perform the specific work I did in a way that yields this same list of 6,777 URLs certainly. I wouldn't expect that anyone else could do that, however, using my methods I would expect that someone else could produce a comparable list of similar sites of similar characteristics of over-blocking by and large.

Q You testified on direct that you used Google to generate sites related to the sites contained—that you extracted from Yahoo!.

Do you have any idea about how Google goes about generating those related sites?

A I do have some information about that.

Q But you don't have any specific information because most of that information is proprietary, isn't that fair?

JUDGE FULLAM: Is that a question. He just said he did, and you're accusing him—

MS. BHATTACHARYYA: I'm asking—

JUDGE FULLAM: —of not having it. Would you ask a question, please.

BY MS. BHATTACHARYYA:

Q Do you have specific information relating to the proprietary methods that Google uses to generate related sites using the What's Related feature?

A To the extent that the methods are proprietary, I of course couldn't have any information about their
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[P. Ex. 1]

[ALA Library Bill of Rights]

Library Bill of Rights

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

V. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Adopted June 18, 1948. Amended February 2, 1961, and January 23, 1980, inclusion of "age" reaffirmed January 23, 1996, by the ALA Council.

[P. Ex. 4]

[ALA Statement on Library Use of Filtering]

STATEMENT ON LIBRARY USE OF FILTERING SOFTWARE

AMERICAN LIBRARY ASSOCIATION/INTELLECTUAL FREEDOM COMMITTEE

On June 26, 1997, the United States Supreme Court in *Reno, Attorney General of the United States, et al.* v. *American Civil Liberties Union, et al.*, issued a sweeping reaffirmation of core First Amendment principles and held that communications over the Internet deserve the highest level of Constitutional protection.

The Court's most fundamental holding was that communications on the Internet deserve the same level of Constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. The Court found that the Internet "constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox."

For libraries, the most critical holding of the Supreme Court is that libraries that make content available on the Internet can continue to do so with the same Constitutional protections that apply to the books on libraries' shelves. The Court's conclusion that "the vast democratic fora of the Internet" merit full constitutional protection serves to protect libraries that provide their patrons with access to the Internet. The Court recognized the importance of enabling individuals to

receive speech from the entire world and to speak to the entire world. Libraries provide those opportunities to many who would not otherwise have them. The Supreme Court's decision protects that access.

The use in libraries of software filters to block constitutionally protected speech is inconsistent with the United States Constitution and federal law and may lead to legal exposure for the library and its governing authorities. The American Library Association affirms that the use of filtering software by libraries to block access to constitutionally protected speech violates the *Library Bill of Rights.*

WHAT IS BLOCKING/FILTERING SOFTWARE?

Blocking/filtering software is a mechanism used to:

- restrict access to Internet content, based on an internal database of the product, or;
- restrict access to Internet content through a database maintained external to the product itself, or;
- restrict access to Internet content to certain ratings assigned to those sites by a third party, or;
- restrict access to Internet content by scanning text, based on a keyword *or* phrase or text string, or;
- restrict access to Internet content by scanning pixels, based on color or tone, or;
- restrict access to Internet content based on the source of the information.

PROBLEMS WITH THE USE OF BLOCKING/FILTERING SOFTWARE IN LIBRARIES

- Publicly supported libraries are governmental institutions subject to the First Amendment, which forbids them from restricting information based on viewpoint or content discrimination.
- Libraries are places of inclusion rather than exclusion. Current blocking/filtering software not only prevents access to what some may consider "objectionable" material, but also blocks information protected by the First Amendment. The result is that legal and useful material will inevitably be blocked.
- Filters can impose the producer's viewpoint on the community.
- Producers do not generally reveal what is being blocked, or provide methods for users to reach sites that were inadvertently blocked.
- Criteria used to block content are vaguely defined and subjectively applied.
- The vast majority of Internet sites are informative and useful. Blocking/filtering software often blocks access to materials it is not designed to block.
- Most blocking/filtering software was designed for the home market and was intended to respond to the preferences of parents making decisions for their children. As these products have moved into the library market, they have created a dissonance with the basic mission of libraries. Libraries are responsible for serving a broad and diverse community with different preferences and

views. Blocking Internet sites is antithetical to library missions because it requires the library to limit information access.

- Filtering all Internet access is a one-size-fits-all "solution," which cannot adapt to the varying ages and maturity levels of individual users.
- A role of librarians is to advise and assist users in selecting information resources. Parents and only parents have the right and responsibility to restrict their own children's access—and only their own children's access—to library resources, including the Internet. Librarians do not serve *in loco parentis*.
- Library use of blocking/filtering software creates an implied contract with parents that their children ***will not*** be able to access material on the Internet that they do not wish their children to read or view. Libraries will be unable to fulfill this implied contract, due to the technological limitations of the software.
- Laws prohibiting the production or distribution of child pornography and obscenity apply to the Internet. These laws provide protection for libraries and their users.

WHAT CAN YOUR LIBRARY DO TO PROMOTE ACCESS TO THE INTERNET?

- Educate yourself, your staff, library board, governing bodies, community leaders, parents, elected officials, etc., about the Internet and how best to take advantage of the wealth of information available. Information on libraries and the Internet is available on the OIF Web site at www.ala.org/alaorg/oif/filtersandfiltering.html.

- Uphold the First Amendment by establishing and implementing written guidelines and policies on Internet use in your library in keeping with your library's overall policies on access to library materials. Information on Internet Use Policies is available on the OIF Web site at www.ala.org-/alaorg/oif/internetusepolicies.html. (See also "Internet Filtering Statements of State Library Associations" at www.ala.org/alaorg/oif/stateresolutions.html and Access to Electronic Information, Services, and Networks: An Interpretation of the Library Bill of Rights at www.ala.org-/alaorg/oif/electacc.html.)
- Promote Internet use by facilitating user access to Web sites that satisfy user interest and needs.
- Create and promote library Web pages designed both for general use and for use by children. These pages should point to sites that have been reviewed by library staff.
- Consider using privacy screens or arranging terminals away from public view to protect a user's confidentiality.
- Provide Internet information and training for parents and children on internet use which will include; the wide variety of useful resources on the internet, child safety on the Internet, limitations of filtering software and library rules regarding time, place and manner restriction.
- Establish and implement user behavior policies.

Intellectual Freedom Committee
July 1, 1997; Rev. November 17, 2000

For further information on this topic, contact the Office for Intellectual Freedom at 800/545-2433, ext. 4223, by fax at (312) 280-2447, or by e-mail at oif@ala.org.

[P. Ex. 9]

[ALA Freedom to Read Statement]

THE FREEDOM TO READ

The freedom to read is essential to our democracy. It is continuously under attack. Private groups and public authorities in various parts of the country are working to remove or limit access to reading materials, to censor content in schools, to label "controversial" views, to distribute lists of "objectionable" books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to reading and as librarians and publishers responsible for disseminating ideas, wish to assert the public interest in the preservation of the freedom to read.

Most attempts at suppression rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow citizens.

We trust Americans to recognize propaganda and misinformation, and to make their own decisions about what they read and believe. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be "protected" against what others think may be bad for them. We believe they still favor free enterprise in ideas and expression.

These efforts at suppression are related to a larger pattern of pressures being brought against education, the press, art and images, films, broadcast media, and the Internet. The problem is not only one of actual censorship. The shadow of fear cast by these pressures leads, we suspect, to an even larger voluntary curtailment of expression by those who seek to avoid controversy.

Such pressure toward conformity is perhaps natural to a time of accelerated change. And yet suppression is never more dangerous than in such a time of social tension. Freedom has given the United States the elasticity to endure strain. Freedom keeps open the path of novel and creative solutions, and enables change to come by choice. Every silencing of a heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of our society and leaves it the less able to deal with controversy and difference.

Now as always in our history, reading is among our greatest freedoms. The freedom to read and write is almost the only means for making generally available ideas or manners of expression that can initially command only a small audience. The written word is the natural medium for the new idea and the untried voice from which come the original contributions to social growth. It is essential to the extended discussion that serious thought requires, and to the accumulation of knowledge and ideas into organized collections.

We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures toward conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend. We believe that every American community must jealously guard the freedom to publish and

to circulate, in order to preserve its own freedom to read. We believe that publishers and librarians have a profound responsibility to give validity to that freedom to read by making it possible for the readers to choose freely from a variety of offerings. The freedom to read is guaranteed by the Constitution. Those with faith in free people will stand firm on these constitutional guarantees of essential rights and will exercise the responsibilities that accompany these rights.

We therefore affirm these propositions:

1. *It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those that are unorthodox or unpopular with the majority.*

Creative thought is by definition new, and what is new is different. The bearer of every new thought is a rebel until that idea is refined and tested. Totalitarian systems attempt to maintain themselves in power by the ruthless suppression of any concept that challenges the established orthodoxy. The power of a democratic system to adapt to change is vastly strengthened by the freedom of its citizens to choose widely from among conflicting opinions offered freely to them. To stifle every nonconformist idea at birth would mark the end of the democratic process. Furthermore, only through the constant activity of weighing and selecting can the democratic mind attain the strength demanded by times like these. We need to know not only what we believe but why we believe it.

2. *Publishers, librarians, and booksellers do not need to endorse every idea or presentation they make available. It would conflict with the public interest for them to establish their own political, moral, or aesthetic views as a standard for determining what should be published or circulated.*

Publishers and librarians serve the educational process by helping to make available knowledge and ideas required for the growth of the mind and the increase of learning. They do not foster education by imposing as mentors the patterns of their own thought. The people should have the freedom to read and consider a broader range of ideas than those that may be held by any single librarian or publisher or government or church. It is wrong that what one can read should be confined to what another thinks proper.

3. *It is contrary to the public interest for publishers or librarians to bar access to writings on the basis of the personal history or political affiliations of the author.*

No art or literature can flourish if it is to be measured by the political views or private lives of its creators. No society of free people can flourish that draws up lists of writers to whom it will not listen, whatever they may have to say.

4. *There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.*

To some, much of modern expression is shocking. But is not much of life itself shocking? We cut off literature at the source if we prevent writers from dealing with the stuff of life. Parents and teachers have a responsi-

bility to prepare the young to meet the diversity of experiences in life to which they will be exposed, as they have a responsibility to help them learn to think critically for themselves. These are affirmative responsibilities, not to be discharged simply by preventing them from reading works for which they are not yet prepared. In these matters values differ, and values cannot be legislated; nor can machinery be devised that will suit the demands of one group without limiting the freedom of others.

5. *It is not in the public interest to force a reader to accept with any expression the prejudgment of a label characterizing it or its author as subversive or dangerous.*

The ideal of labeling presupposes the existence of individuals or groups with wisdom to determine by authority what is good or bad for the citizen. It presupposes that individuals must be directed in making up their minds about the ideas they examine. But Americans do not need others to do their thinking for them.

6. *It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.*

It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society individuals are free to determine for themselves what they wish to read, and each group is free to determine what it will recommend to its freely associated members. But no group has the right to take the law

into its own hands, and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is no freedom if it is accorded only to the accepted and the inoffensive.

7. *It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression. By the exercise of this affirmative responsibility, they can demonstrate that the answer to a "bad" book is a good one, the answer to a "bad" idea is a good one.*

The freedom to read is of little consequence when the reader cannot obtain matter fit for that reader's purpose. What is needed is not only the absence of restraint, but the positive provision of opportunity for the people to read the best that has been thought and said. Books are the major channel by which the intellectual inheritance is handed down, and the principal means of its testing and growth. The defense of the freedom to read requires of all publishers and librarians the utmost of their faculties, and deserves of all citizens the fullest of their support.

We state these propositions neither lightly nor as easy generalizations. We here stake out a lofty claim for the value of the written word. We do so because we believe that it is possessed of enormous variety and usefulness, worthy of cherishing and keeping free. We realize that the application of these propositions may mean the dissemination of ideas and manners of expression that are repugnant to many persons. We do not state these propositions in the comfortable belief that what people read is unimportant. We believe rather that what people read is deeply important; that ideas can be dangerous; but that the suppression of ideas is fatal to a

democratic society. Freedom itself is a dangerous way of life, but it is ours.

This statement was originally issued in May of 1953 by the Westchester Conference of the American Library Association and the American Book Publishers Council, which in 1970 consolidated with the American Educational Publishers Institute to become the Association of American Publishers.

Adopted June 25, 1953; revised January 28, 1972, January 16, 1991, July 12, 2000, by the ALA Council and the AAP Freedom to Read Committee.

A Joint Statement by: American Library Association
Association of American Publishers

Subsequently Endorsed by:

American Association of University Professors
American Booksellers Foundation for Free Expression
American Society of Journalists and Authors
The American Society of Newspaper Editors
Anti-Defamation League of B'nai B'rith
Association of American University Presses
Center for Democracy & Technology
The Children's Book Council
The Electronic Frontier Foundation
Feminists for Free Expression
Freedom to Read Foundation
International Reading Association
The Media Institute
National Coalition Against Censorship
National PTA
Parents, Families and Friends of Lesbians and Gays
People for the American Way

Student Press Law Center
The Thomas Jefferson Center for the Protection of Free Expression

[P. Ex. 29]

[Libraries and the Internet Toolkit]

[Seal Omitted]

Libraries & the Internet Toolkit

Tips and guidance for managing and communicating about the Internet

www.ala.org/alaorg/oif/internettoolkit.html

Contributors:
American Library Association:
Office for Intellectual Freedom,
Public Information Office and
Washington Office

[Seal Omitted]

Libraries & the Internet Toolkit
This document was last updated
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Permission is granted to libraries to reproduce this toolkit. Copies may be downloaded at **www.ala.org/alaorg/oif/internettoolkit.html.**

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Introduction

The Internet. No other medium in history has provided us with so much information so easily.

Where else can you get the latest news, "visit" a virtual museum, chat with friends in other countries and browse your favorite department store?

The Internet is a rich and educational resource for information, ideas and entertainment. But the Internet has also raised concerns about privacy and children's access to information. Libraries, especially public libraries, are facing these concerns every day. As the number one point of entry to the Internet outside of work, school or home, libraries are being challenged to provide online access to this extraordinary resource while facing scrutiny about their methods of protecting children from inappropriate material.

The American Library Association (ALA) encourages all libraries to implement policies that protect both children and public access to information and to take an active role in educating their communities about this important new resource. To support this effort, ALA has produced this "toolkit" with tips and guidance to assist librarians in managing the Internet and educating the public about how to use it effectively.

ALA also has published a brochure for parents called *The Librarian's Guide to Cyberspace for Parents and Kids* **(www.ala.org/parentspage/greatsites/guide.html)** with an introduction to the Internet, online safety tips and more than 50 of the best Web sites for kids. ALA's 700+ Great Sites for Kids and the People Who Care About Them **(www.ala.org/parentspage/greatsites/)** is an even more comprehensive resource of links to all

sorts of information, organized by topic and category by children's librarians.

What ALA Is for . . .

We are for libraries being partners with their respective communities to do the best job they can in providing resources to serve the needs of all of their patrons. When those needs within a community come into conflict with each other in a library setting, we are for a resolution that protects the First Amendment rights of all parties in conflict.

We are for the First Amendment rights of children to use libraries and we are for the rights of parents to decide with their children how their children use libraries.

We are for that dual advocacy role, but acknowledge that parents' rights in libraries do sometimes supersede the rights of their children. That is the role of the parent in our society—to care for, instruct, protect and monitor the behavior of their own children.

We are for parents taking an active role in carrying out those parental responsibilities in libraries, but not at the expense of other people's rights, or the rights of other people's children.

We are for protecting equitable access to the Internet for all, and providing the necessary education to make that access enriching and safe.

Key Messages Fast Facts

Key Messages

- The Internet is an important and exciting information resource. Our goal as librarians is to help people of all ages make the most of it and become information literate. We encourage everyone to go to the library and learn how to use this incredible and valuable resource!
- Librarians care deeply about children. We know filters aren't the best way or the only way to protect children online.
- The best protection for children is to teach them to use the Internet properly and to make good choices.
- Librarians answer questions and guide children to quality Web sites the same way they recommend books and other resources.

Fast Facts

- 95.7 percent of all public library outlets offer public access to the Internet.
- Public libraries offering Internet access have or are developing Internet use policies.
- For people without computers at home, work or school, libraries are the number one point of access to the Internet.
- Research has shown filters block at least one of five sites containing legal, useful information. They failed to block an average of 20 percent of material defined as undesirable.

Checklist for Creating an Internet Use Policy

The ALA strongly encourages all libraries to adopt and implement a written Internet use policy in the same way they adopt other library use and access policies. This policy should be in keeping with your library's mission statements, other access policies and community needs.

Traditionally, the children's and young adult sections contain materials selected for these groups, although children are not restricted to those areas. The same holds true for the Internet. For a discussion of the legal issues involved, see "Internet Filtering in Public Libraries," a memorandum from Jenner & Block at **www.ftrf.org/internetfilteringmemo.html.**

Here are a few suggestions to consider when creating or updating your policies:

- Ensure that policies speak to access for all.
- Involve your library staff, board and Friends group in the policy writing process.
- Keep it simple. Avoid jargon. Making the policy too technical will confuse people.
- Make policies readily available and visible to the public.
- Provide a code of conduct or etiquette guide for using the Internet at your library. Include specific suggestions for positive action. Also list prohibited behavior.
- Include a statement addressing patron privacy.
- Communicate clearly that users are responsible for what they access online; parents are responsible for their children's Internet use.

More tips and sample policies can be found at Internet Use Policies **(www.ala.org/alaorg/oif/internetusepolicies.html).**

Please send copies of your Internet use policy to the ALA Office for Intellectual Freedom, 50 East Huron Street, Chicago, IL, 60611, to keep on file. To receive samples of policies and materials from other libraries or

other intellectual freedom materials, contact the Office for Intellectual Freedom at 800-545-2433, ext. 4223, or send an e-mail to oif@ala.org. All of ALA's intellectual freedom policies and statements can be found on the OIF home page at **www.ala.org/alaorg/oif/.**

What You Can Do

Librarians can take many proactive measures to address concerns about children's Internet access. Be strategic. Be creative. Most of all, be prepared.

- Make sure your community is as knowledgeable about the Internet as possible. Instruct your staff, your library board and Friends about how the Internet works and what it offers. Encourage parents and children to take advantage of the wealth of information available online.
- Establish time limits on the use of computers, if necessary. Regardless of the method you choose—a sign-in sheet, an honor system or advance registration—always keep in mind the privacy of your users. You also may wish to create a daily limit for those users who like to "hop on and off" the computer. This reduces a potential monopoly by a handful of users.
- Link children's computers to pre-selected, recommended Web sites such as ALA's 700+ Great Sites. (Art for a button link can be found at **www.ssdesign.com/prtalkshop/art/index.html.)**
- Preset selected computers to search engines designed especially for children, such as KidsClick! **(http://sunsite.berkeley.edu/KidsClick!)** or Ask Jeeves for Kids **(www.ajkids.com).**

- Provide copies of *ALA's Librarian's Guide to Cyberspace for Parents & Kids* or other brochures with tips and resources to help parents guide their children's Internet use.
- Offer Internet classes for parents, children and others that focus on different aspects of the Internet, such as search engines, Internet safety or what makes a great Web site. Or put your classes online so the public has access to the material at their convenience. Make sure the classes include information about your Internet use policy, time limits on the computer and other pertinent instructions. Provide handouts.
- Recruit volunteers to teach Internet classes and assist users at their computer workstations. Make sure these volunteers are trained on your library's Internet use policy, privacy policy, and state and local confidentiality statutes.
- Create special displays of books and materials related to the Internet. Include information specifically geared for parents and children. Prepare a list of Internet-related resources (books, magazines, videos, reference materials) that people can take home with them.
- Encourage your users—including children—to recommend sites to your staff. You can ask them to vote on their favorite Web sites and print their top choices on flyers or bookmarks and distribute them.
- Include Internet resources in library displays. For example, highlight information available online in your display for Black History Month, Women's History Month, Banned Books Week, or your summer reading program.

- Consult "Checklist & Ideas for Library Staff Working with Community Leaders" at **www.ala.org/alaorg/oif/checklist.html** for a useful checklist of ideas for working with community residents.
- Develop Web sites for children and young adults that link to material especially recommended for them.
- Teach children how to use the Internet and to be critical users of information.
- Provide opportunities for parents and children to learn together. (For example, see familiesonlinetogether at **www.getnetwise.org/onlinetogether/.)**
- Use privacy screens or position terminals to prevent inadvertent or accidental viewing.
- Librarians across the country have taken steps to ensure that members of their communities have positive, safe experiences on the Internet. For a list of real life examples of how librarians successfully use the Internet every day, see Best Practices: How Librarians Are Managing the Internet at **www.ala.org/alaorg/oif/bestpractices.html.**

Educate! Inform! Promote!

Reach out to your community. Find creative ways to spread the word about library policies and programs to ensure a positive online experience.

- Seek opportunities to talk about your library's Internet use policy and computer/online resources. This may include speaking engagements with the PTA, your local school board, Rotary, Chamber of Commerce or other organizations. Provide hand-

outs such as *The Librarian's Guide to Cyberspace* brochure.

- Tie in Internet classes to "back-to-school" night, National Library Week, Teen Read Week or other promotions.
- Host an "open house" or other special demonstrations of your library's computer workstations and Web site to help users become more familiar with your online offerings.
- Create flyers or bookmarks with your library's Web address and computer training schedule. Make these available at the check-out desk and in locations outside the library. Work with schools to provide information to parents.
- Invite the mayor, state and federal legislators and other VIPs to tour the library and learn about your Internet policies and services. Provide a photo opportunity and encourage the newspaper to run the photo.
- Feature your Internet policy, classes and other online resources on your library's home page.
- Pitch feature or consumer stories to local media about what parents should know about the Internet and how librarians can help.

What Makes a Great Web Site for Children?

Make sure children and parents know what to look for in a Web site.

Several resources to help determine what's a good Web site for children can be found at Especially for Children and Their Parents (**www.ala.org/alaorg/oif/-children.html**). One such resource is from the

Multnomah County Library Homework Center—"Evaluating Web Sites: What Makes a Web Site Good?" (**www.multnomah.lib.or.us/lib/homework/webeval.-html**).

The Children and Technology Committee of the Association for Library Service to Children, a division of the ALA, suggests the following criteria for selecting quality Web sites for children:

- The purpose and content of the site are clear. A source is clearly identified. Contact information is provided.
- The content encourages exploration and thinking. It is appealing to, and suits the age level of, the children for whom it was designed.
- The site is easy to access. It loads quickly and essential information comes up first. Information is accurate and up to date.
- The site takes advantage of the Web's capabilities—it does more than can be done with print. It contributes something unique or unusual.

Current law requires commercial Web sites to verify parental permission before collecting personally identifiable information from children. For up-to-date information, visit the ALA Washington Office, Office of Information Technology Policy Web site, **www.ala.org/-oitp/privacy.html**. All great sites will include a privacy policy.

Tips for Parents

The following tips can be reproduced or edited for your library. Print them on flyers or bookmarks and

distribute during Internet training classes, back-to-school nights, library open houses and other events.

- Make time to learn about the Internet and how it works. Every computer with Internet access has search engines designed specifically for children that lead to sites selected especially for kids. It's important to become familiar with the Internet so you can use this medium with your children. Many schools and libraries offer classes that teach how to guide your children about the Internet.
- Set rules. Just as children are not allowed to play in the street, neither should they play unsupervised on the Internet. There are many common-sense tips that can ensure children have a positive experience online. For example, children should be taught not to give personal information, such as their names and addresses, to strangers online as well as off and not to agree to meet someone they met online without a parent or guardian present. Teach your children to value privacy-theirs and yours.
- Teach your children values and guidelines to use in selecting what they read and view. Not every Web site is right for every child, anymore than every book in the library is suitable for every person. It's up to you to let your children know what subjects and Web sites are off limits and to explain why. Parents should not let their children surf the Web alone unless they have set rules for them.
- Encourage your child to ask the librarian for help when seeking information on the Internet.
- Check out "Especially for Children and their Parents" at **www.ala.org/alaorg/oif/children.html**. This

page includes links to online safety rules and suggestions and great sites for parents and kids.

ALA and Filtering

The role of the ALA is to recommend policies that uphold one of the highest ideals of our profession and nation—the freedom to read and receive information as defined by our constitution and courts. Local libraries adopt their own policies to uphold this ideal and address the specific needs of their communities.

ALA does not recommend the use in libraries of filtering technology that blocks constitutionally protected information. Filters are known to block more than 20 percent of sites with legal information that library users may find helpful for school, work, health and other needs. Filters also do not fully protect children from objectionable material such as pornography, hate speech and violence.

Major purposes of libraries include empowering their users by providing them with the information they want or need, and helping people of all ages become information literate. To fulfill these missions, libraries must provide access to the broadest range of information. The Internet allows librarians to do this better than ever before.

ALA strongly encourages local libraries to adopt and implement Internet use policies that protect public access to information and promote a positive online experience. The ALA has prepared several documents to help local libraries develop policies and programs that address these concerns (see section on Helpful Resources).

ALA upholds the right and responsibility of parents to guide their children's library use, including their

Internet use. ALA encourages parents to learn about this important resource so they can guide their children and encourages local libraries to offer instruction for children and adults in how to use the Internet effectively.

ALA believes legislative attempts to mandate the use of filters are unnecessary, unwise and unconstitutional.

Children's Internet Protection Act (CIPA)

Congress passed the Children's Internet Protection Act (CIPA) and the Neighborhood Children's Internet Protection Act (NCIPA) as part of a major spending bill (H.R. 4577) on December 15, 2000. President Clinton signed the bill into law on December 21, 2000 (Public Law 106-554). The Acts place restrictions on the use of funding that is available through the Library Services and Technology Act, Title III of the Elementary and Secondary Education Act, and on the Universal Service discount program known as the E-rate. These restrictions take the form of requirements for Internet safety policies and technology which blocks or filters certain material from being accessed through the Internet.

ALA has filed a lawsuit to overturn CIPA, which ALA believes is unconstitutional. For people depending on the services libraries offer, ALA will fight to protect the rights of library users.

For the latest information and guidance about how the Acts affect libraries, what libraries need to do, and what ALA is doing to overturn CIPA, see the CIPA home page **at www.ala.org/cipa/**. The CIPA Web site is a joint effort of ALA's Office for Intellectual Freedom and Washington Office.

Debate over Filters

Public concerns about Internet access at the library should not be ignored. Many local libraries are experiencing increased pressure to limit Internet use by groups that believe filters are necessary to protect both children and adults from "undesirable" material. At the local, state and federal levels, legislation that would mandate the use of Internet filters in libraries has been introduced, and in some cases passed.

In order to prepare for dealing with such concerns, libraries should consider taking the following steps:

- Inform elected officials, your board members, Friends and library users of issues and concerns related to library Internet use. (See Checklist & Ideas for Library Staff Working with Community Leaders **(www.ala.org/alaorg/oif/checklist.html)**.
- Designate an official library spokesperson who is able to communicate the library's position in a caring and understandable way.
- Keep the lines of communication open. Listen to and acknowledge all concerns.
- Be prepared to demonstrate and document the policies and procedures your library has in place to address concerns. If your library has experienced problems with inappropriate Internet use, explain how you have dealt with it—in accordance with your Internet Use Policy.
- Make copies of ALA's *Libraries, the Internet and Filters* fact sheet or prepare your own fact sheet explaining what filters can and cannot do; pertinent legislation and court rulings; and other background.

- Be prepared to describe in layperson's terms the concerns librarians have about the limitations of filters, the false sense of protection filters may give and their impact on free access to materials that benefit library users.

If a local decision is made to use filters it's important to keep in mind the following:

- Consider providing a choice of filtered and unfiltered access to the Internet in keeping with court rulings that adults should not be limited to materials appropriate only for children and in recognition that the intellectual needs and maturity levels vary greatly from a six-year-old to an 18-year-old.
- Provide notice to library users when they are using a computer with filtered access to the Internet.
- Inform library users about which computers offer a filtering option in a way that does not infringe on their privacy or cause embarrassment. It should be clear to users when filters are on or off.
- Inform library users that their choice of sites or filtering options might not be confidential, depending on the system in place. Ideally, library computer technology should be programmed to maintain user confidentiality.
- Inform library users about the method in which they may request a site be unblocked for appropriate use.
- Be vigilant in monitoring developments in technology that best provide privacy, respect for First Amendment rights and freedom of choice for library users.

If your library is subject to a filtering mandate, the following are additional suggestions to consider:

- Inform yourself about the extent and details of the mandate. Know what choices your institution has within the mandate.
- Inform your library users about what restrictions are being placed on their Internet access and about what legal body is responsible for the restrictions.
- Document the impacts that the mandate has on your library and library services.
- Share the stories of how filtering impacts your library with library users, legislators, press and ALA.

Handling Tough Questions

The best way to deal with tough questions from library users, your board members, the mayor or a reporter is to be prepared. The following are a few tips to keep in mind:

- Listen—don't judge.
- Anticipate questions you might be asked and practice answering them.
- Acknowledge: "You obviously have strong feelings. I respect your views. Let me give you another perspective."
- Reframe the question—Why do you think students should be allowed to view pornography on the Internet? "You're asking me about our Internet policy...."
- Be honest. Tell the truth as you know it. "My experience with the Internet is...."

- Remember, it's not just what you say but how you say it. Speak simply, sincerely and with conviction.
- Less is more. Keep your answers short and to the point.
- Stick to your key message. Deliver it at least three times.
- Avoid use of negative/inflammatory words such as "pornography."
- Don't fudge. If you don't know the answer, say so.
- Never say "No comment." A simple "I'm sorry I can't answer that" is preferable.

Sample Answers to Tough Questions

Why do librarians allow kids to have access to pornography?

- We don't. Librarians care deeply about children. Libraries already have policies and programs to ensure children have an enriching and safe online experience. And librarians are there to help guide them. In our library, we find kids use the Internet the same way they use the library. They work on homework assignments, read about sports, music and other interests, and communicate with their friends.
- Librarians guide children to quality materials, whether in books or on Internet sites. We also provide classes to help teach children and parents about the Internet. In an information-rich society, librarians are information smart.

What are libraries doing about Internet porn?

- Librarians work with parents and community members to find solutions that work in their communities. We work closely with parents and others to find the best mix of solutions to ensure a safe, enriching experience—including children's areas with age appropriate books, tapes, records and Web sites.
- More than 95 percent of public libraries have Internet-use policies that were created with community input and local control. Libraries may: require library cards to use the Internet, require a signed agreement to be on file, monitor computer usage or locate Internet-access stations in highly trafficked areas, among other policies. A New Jersey public library requires parental choice of filtered or unfiltered computer access for children—and 80 to 90 percent of parents choose unfiltered.
- The Internet is good for kids. The Internet is changing how we live, learn, work and interact with one another. If today's children are to succeed, they must learn information literacy skills for ever-changing technologies.
- Few libraries report having difficulties with people looking at pornography. The vast majority of children and adults continue to use the library and the Internet responsibly and appropriately.

My neighbor told me she saw a group of teenage boys looking at nude pictures, and she had to walk by them with her four-year-old. Why would my library allow this?

- I'm sorry if your neighbor was uncomfortable. Libraries have policies that deal with disruptive be-

havior the same way they have other library policies. If the boys were causing a disturbance, this should be reported to the librarian. The fact is, the vast majority of children and adults use the Internet responsibly.

What can parents do to help protect their children?

- Education is the key. Parents don't need filters to protect their children online any more than they need a bodyguard to protect them in public. Filtering won't help kids understand there are certain people they shouldn't talk to on the Internet, and it won't teach them how to avoid negative sites.
- Parents should teach their children practical safety—that online or in public, the same rules apply: "Don't talk to strangers" and "Don't reveal information about yourself or your family just because you were asked for it." Most libraries offer Internet safety classes and tips online.
- We're concerned filters give parents a false sense of security that their children are protected when they aren't. Education is more effective than filters—kids need to make good decisions about what they read and view, no matter where they are.

What affect does the Internet have on children's privacy?

- The Internet provides children with increased opportunities to access information and resources. Children's safety depends on their being taught to be responsible for the protection of their own personal information. In libraries, librarians continue to assist children to find sound, credible materials, while helping them to understand the need to protect their privacy.

How do I know my child is safe at the library?

- Libraries are very safe, but they are open to everyone. Parents should accompany young children to the library and establish rules and expectations for older children. It's important to teach children how to make good decisions about what they read and view, no matter where they are.

My library uses privacy screens on its Internet terminals. Why has my library provided what amounts to private "peep show booths" for viewing Internet pornography?

- Your library has decided that privacy screens are the best way to ensure that its users have the privacy they need to research and study topics of interest to them, for instance, information on sensitive medical problems. Some users report being uncomfortable when they see other users viewing classical works of art or photographs of the Holocaust. Regardless, every library user has a right to privacy. While reading a book in the library, you don't expect a librarian or other user to be looking over your shoulder. When you are at an Internet terminal, you don't expect—or want—someone looking over your shoulder either. In the same way people have a right to access the information they want or need, they have a right to read or view that information in private.

What's wrong with filters anyway?

- Filters aren't effective. Filters were developed for home use, not for use in public institutions like libraries. Tests show filters block a lot of information many people find useful. At the same time, filters have been found to miss 20 percent or more of

sites with undesirable material. We're concerned that filters give parents a false sense of security that their children are protected when they aren't. Education is more effective than filters. No one has created a filter more effective than a librarian.

Don't some libraries already use filters?

- Some libraries offer some kind of filtering technology as part of their local Internet-use policy. About 15 percent of libraries use filters in some way—as an option on computers, or on some children's computers. A New Jersey library that offers one computer with filtered and one computer with unfiltered access to the Internet sends home permission slips for parents to choose what they prefer for their children. Between 80 and 90 percent of parents choose unfiltered access.

Isn't some protection better than none?

- Filters aren't the only way to protect children—or the best. Filtering technology won't help kids understand there are certain people they shouldn't talk to on the Internet, and it won't teach them how to avoid negative sites. The key is education. Many libraries offer classes for adults and children. They also have rules and policies promoting an enriching and safe online experience for everyone.

If libraries oppose filters so much, why don't they just give up the federal money? What's the big deal?

- The e-rate and LSTA programs specifically support improving access to technology in libraries. Forcing libraries to choose between funding for telecommunications services and new computer hardware and censoring access to such vital resources like medical or political information means library users

will lose—especially those in the most poverty-stricken and geographically isolated areas of the country.

- More than $190 million has been disbursed over three years with the federal e-rate program.
- The Library Services and Technology Act has distributed more than $782 million to libraries nationwide since 1998.

Won't computers and the Internet put libraries out of business?

- Not at all. In fact, if we didn't already have libraries, we would have to invent them because libraries have something very important the Internet doesn't—the librarian. The Internet is a wonderful resource and a great convenience, but it's far from perfect. Librarians have been collecting and organizing information for centuries. We can help you find the best source of information, whether it's online or in a book or pamphlet. Libraries also are places where people connect not just with books and computers, but with other people.

Why is the ALA forcing its policies on local libraries?

- The ALA's role is to recommend policies that promote the highest quality library and information services for the public. ALA respects the right of local libraries to adopt policies that uphold this ideal and meet the needs of their library users. Our association believes filters are not the best way to protect children.

Why should my tax dollars go to fund peep shows in the library?

- Your tax dollars support access to information. They buy picture books, encyclopedias, magazines, computers, and all the other materials available for you and your neighbors. They also provide access to the Internet—the most important new information technology of our time.

Libraries don't carry Hustler, why do they allow Internet porn?

- They don't. Nor do librarians monitor the books or periodicals people bring into the library. Just as people bring their own materials for reading and studying, the Internet empowers users to choose for themselves the information they wish to view. Librarians can help guide searches, but they do not control the rapidly changing information freely available via the Internet.

Kids can't rent R-rated movies at the video store, or buy Playboy at the newsstand. Why won't you use the same commonsense restrictions at my public library?

- Those types of rating systems are voluntary, and libraries make them available to assist parents and others in making decisions for their families and themselves. As librarians, we strongly encourage parents to take an active role in monitoring what their children see and view, but as public employees, it's not appropriate for librarians to make those decisions for them.

What are some examples of Web sites that have been filtered?

- One filter erroneously blocked the Web site of Republican Congressional candidate Jeffery Pollack for "full nudity," "partial nudity" and "sexual acts/ tests." Once favoring mandatory filtering, Pollack now opposes filtering and has since removed pro-filtering statements from his Web site. The sites of more than 30 candidates across the country were blocked in some manner, according to a November 2000 study conducted by peacefire.org.
- Other recorded examples have includ blocking of the Progressive Review, the FBI, eBay, NASA, Planned Parenthood, Beaver College, Superbowl XXX and the Mars Exploration, to name a few.

Why is the ALA suing against CIPA?

- The Children's Internet Protection Act (CIPA) doesn't protect children. Filters provide a false sense of security, suggesting children are protected when they are not. Meanwhile, CIPA limits access to legal, useful information for all library users.
- The American Library Association believes strongly that CIPA is unconstitutional. The filtering mandate imposed by Congress is unworkable in the context of a public institution because it restricts access to constitutionally protected speech on the users served by libraries. No filtering or blocking technology exists that blocks access only to speech that is obscene, child pornography or harmful to minors. And no filtering technology protects children from all objectionable materials.
- Filters are contrary to the mission of the public library, which is to provide access to the broadest

range of information for a community of diverse individuals. Filters have been shown to block access to medical information, political information and information related to the arts and literature.

Valuable Links

Selected publications available from ALA Editions
www.ala.org/alaorg/oif/selectdpubsala.html
To order, call 800-545-2433, press 7.
ALA members receive a 10 percent discount.

Selected publications available from other publishers
www.ala/org/alaorg/oif/selectedpubother.html

Quotable Quotes
www.ala.org/alaorg/oif/quotablequotes.html

Intellectual Freedom and Censorship Q & A
www.ala.org/alaorg/oif/
intellectualfreedomandcensorship.html

Libraries: An American Value
www.ala.org/alaorg/oif/lib_val.html

Statement of Commitment to Excellence in Library Service to Children in a Technological Age
www.ala.org/alsc/techstatement.html

Helpful Resources

ALA Office for Intellectual Freedom
www.ala.org/alaorg/oif/index.html
The Office for Intellectual Freedom provides a wealth of information regarding intellectual freedom and censorship, (including the forthcoming sixth edition of the Intellectual Freedom Manual,), sample library policies, the Library Bill of Rights and its Interpretations, intellectual freedom statements and more. Excellent resource for librarians dealing with Internet access is-

sues. Contact: ALA Office for Intellectual Freedom. Telephone: 800-545-2433, ext. 4223. Fax: 312-280-4227. E-mail: oif@ala.org

Children and the Internet: Guidelines for Developing Public Library Policy
www.ala.org/alsc/child_internet.html
Association for Library Trustees and Advocates, Association for Library Service to Children, Public Library Association, divisions of the ALA, 1998. Handbook designed for library trustees and others who are involved in setting public library policy and procedures. Sample Internet use policies and guidelines, resource lists and articles about intellectual freedom and censorship issues.

Coping with Challenges—Strategies and Tips for All Types of Libraries
www.ala.org/alaorg/oif/coping_inf.html
ALA, 1999, second edition. Tips and resources for developing and administering intellectual freedom policies, and communicating them to the public. Free. Contact: ALA Office for Intellectual Freedom. Telephone: 800-545-2433, ext. 4223. Fax: 312-280-4227. E-mail: oif@ala.org.

Filters and Filtering
http://www.ala.org/alaorg/oif/filtersandfiltering.html
The ALA Office for Intellectual Freedom offers links from its Web site to Internet use policies, court cases, pending legislation, intellectual freedom statements and more.

Guidelines and Considerations for Developing a Public Library Internet Use Policy
www.ala.org/alaorg/oif/internet.html

The Office for Intellectual Freedom wrote this guideline to assist libraries in writing an Internet use policy.

Intellectual Freedom for Children: The Censor is Coming
Association for Library Service to Children, 2000. This packet includes tips on how to deal with challenges and how to set selection policy. It also includes a chapter on filtering and the Internet. To order, call 800-545-2433, press 7.

Library Advocacy Now!
http://www.ala.org/pio/advocacy/
Training programs on how to be an effective spokesperson on library issues including children's access to the Internet. Little to no cost for local and state library groups of 25 or more. Contact: ALA Public Information Office. Telephone: 800-545-2433, ext. 5041/5044. Fax: 312-280-8520. Email: advocacy@ala.org.

The Nine Information Literacy Standards for Student Learning
www.ala.org/aasl/ip_nine.html
These standards, which anyone can use, outline the process for becoming information literate, defined as being able to access information efficiently and effectively, evaluate information critically and competently, and use information accurately and creatively.

PLA Tech Note: Filtering
www.pla.org/technotes/filtering.html
The Public Library Association provides questions and answers about filtering, information about Internet use policies and links to related resources, articles and court cases that address the issue of filtering in public libraries.

Online Resources for Parents and Children

700+ Amazing, Spectacular, Mysterious, Wonderful Web Sites for Kids and the Adults Who Care About Them
www.ala.org/parentspage/greatsites/
A cybercollection of links to Web sites for fun and learning. Recommended and organized by topic by children's librarians. Sponsored by the Association for Library Service to Children, a division of the ALA.

America Links Up
http://www.americalinksup.org
Tips and tools to help ensure children have a safe and rewarding online experience. Part of a parent education campaign launched in September 1998.

American Library Association/America Links Up @ the Library
http://www.ala.org/teach-in
Tips, suggestions and resources for sponsoring an Internet "teach-in."

Child Safety on the Information Superhighway
www.safekids.com/child_safety.htm
Larry Magid, a syndicated columnist for the *Los Angeles Times*, gives tips for becoming street smart on the Web. His "Guidelines for Parents" explains how to deal with everything from suggestive or misleading content to the danger of online-arranged meetings with strangers.

Especially for Children and Their Parents
www.ala.org/alaorg/oif/children.html
This page includes links to online safety rules and suggestions, designed-for-children search engines, all ALA

great sites, and other great sites for parents and kids. Also includes links to privacy pages.

FamiliesConnect
www.ala.org/ICONN/familiesconnect.html
Online classes from the American Association of School Librarians (AASL), a division of the ALA, designed to help parents and children learn to use the Internet together.

GetNetwise
www.getnetwise.org
An online service of companies and non-profit groups concerned about child safety on the Internet. The Web site provides a comprehensive "Web-wide" resource with safety tips, ways to report online trouble, tech tools for families, great Web sites for kids and a glossary of Internet terms.

ICONNnect
http://www.ala.org/ICONN/
Online classes for parents, librarians, teachers and others in how to use the Internet as an educational resource. Sponsored by the AASL.

KidsConnect
www.ala.org/ICONN/AskKC.html
An online question and answer service for students, operated by the American Association of School Librarians in partnership with the Information Institute of Syracuse University (N.Y.). The project is underwritten by Microsoft Corporation. Questions can be sent by e-mail to: AskKC@ala.org.Answers are promised within two school days.

The Librarian's Guide to Cyberspace for Parents & Kids
www.ala.org/parentspage/greatsites/guide.html
ALA's popular brochure with an introduction to the Internet for parents, safety tips, recommended Web sites and more. Free copies are available from the ALA Public Information Office while supplies last. You will be charged for shipping. Telephone: 800-545-2433. ext. 5044/5041. Fax: 312-944-8520. E-mail: pio@ala.org.

The Parents' Guide to the Information Superhighway
www.childrenspartnership.org/bbar/pbpg.html
Rules and tools for families online from The Children's Partnership. Comprehensive look at the information superhighway and what parents should know to help their children use it safely and wisely.

Parents' Guide to the Internet
http://www.ed.gov/pubs/parents/internet/
From the U.S. Department of Education, this guide suggests how parents can help their children tap into the wonders of the Internet while safeguarding them from potential hazards.

Privacy Resources for Librarians, Library Users, and Families
www.ala.org/alaorg/oif/privacyresources.html
This resource is intended to help librarians and all library users understand the issue of privacy and confidentiality.

Safety Tips for Kids on the Internet from the Federal Bureau of Investigation
http://www.fbi.gov/kids/crimepre/internet/internet.html
Site focuses on online safety and ways to report abuses.

A Safety Net for the Internet: A Parent's Guide
http://www.nypl.org/branch/safety.html
What parents should know about the Internet from the New York Public Library.

Teen Hoopla: An Internet Guide for Teens
www.ala.org/teenhoopla
Links to resources of special interest to teens. Subject areas include Arts and Entertainment, Books, Comics and Authors, Homework, Internet, Sports and more. The site is provided by the Young Adult Library Services Association, a division of ALA.

Fact Sheet: Libraries, the Internet and Filtering

In the race to wire America, one institution has led the way in ensuring that all people have access to this important new resource called the Internet: the library.

Congress recognized this essential role when it designated public libraries as universal service providers for online information in the Telecommunications Act of 1996. Since then, the number of public libraries online has tripled. Libraries are one of America's great democratic institutions, providing access to books and other resources to people of all ages and backgrounds regardless of their ability to pay. Today, libraries play a critical role in bridging the Digital Divide. Research shows that for people without Internet access at home, school or work, public libraries are the number one point of access (*Falling Through the Net*, NTIA 2000.).

The ALA acknowledges that there are laws pertaining to illegal materials and activity on the Internet that should be enforced. The ALA believes that the recently passed Children's Internet Protection Act is unconstitutional, and therefore is challenging the Act in

court. The association does not endorse the use of filtering technology in public libraries, because it is known to block legal material that library users may find useful for their jobs, studies, health and other needs.

The association strongly encourages local libraries to adopt policies and practices that govern Internet use in the same way they adopt other policies to ensure a positive library experience. The association also takes an active role in educating the public about how to use the Internet and encourages local libraries to play a leadership role in their communities. Almost all libraries offering Internet service have such policies and programs.

Fact: 95.7 percent of all public library outlets offer public Internet access. LARC Fact Sheet Number 26 (www.ala.org/library/fact26.html)

Fact: 95 percent of public libraries providing Internet access have formal Internet use policies. 2000 Survey of Internet Access Management in Public Libraries: Summary of Findings (www.lis.uiuc.edu/gslis/research/internet.pdf)

Fact: Evidence shows that the Internet is maintaining or extending family togetherness, helps create and strengthen friendships, and doesn't harm children's performance in school. "Contrary to popular belief, the Net doesn't alienate families. It brings them together." Christian Science Monitor, 10/26/00

Fact: Libraries report few complaints about Internet content from their users. A survey of approximately 1,000 public libraries found that while 50 percent of libraries had received informal

complaints about Internet access, only about 7 percent of these were content-related (although not necessarily focused on pornography). Most were about faulty equipment or a slow response time. Library Research Center of the University of Illinois at Urbana-Champaign, July 2000

Fact: The Supreme Court has ruled that communications on the Internet cannot be limited to what is suitable for children. *Reno v. ACLU*, March 1997

Fact: A federal district judge ruled that the use of filters on all computer terminals at the Loudoun County Library in Virginia was overly restrictive and violated the right of free speech guaranteed by the First Amendment. The library now has a policy that permits adults to choose computers with or without Internet filters. Parents must sign a statement declaring whether their children are allowed to use the Internet with or without filters. *Mainstream Loudoun v. Loudoun County Library*, November 23, 1998

Fact: A judge in Alameda County (Calif.) Superior Court dismissed a suit by a mother demanding that the Livermore Library install Internet filters after her 12-year-old son downloaded sexually explicit images onto a disk. A second suit filed by the mother was also dismissed. An appeals court has upheld the final dismissal of her lawsuit. *Kathleen R., et al. v. City of Livermore*, March 6, 2001

How filters work

Two basic types of filters for restricting access to Internet content currently dominate the commercial market: filters that block content containing disapproved words and filters that block access according to a compiled list of disapproved sites.

So-called "keyword" filters are most commonly used to screen e-mail and chat room messages by looking for listed "bad" words. Some filters can be set to reject the message or to forward it to a system administrator for review if a listed word is detected. Sometimes a message may be sent informing the sender that the message has been blocked.

Filters that block according to the originating site are most commonly used to restrict Web access. Currently, most commercial Web filters use "denial lists" of unapproved sites. The filter compares a Web browser request for a Web page to the denial list and, if the site is listed, prevents the browser from accessing the page.

Some of the more responsive products indicate the reason a site was included on a denial list, which allows the user to "tune" the filter by choosing the level and type of filtering desired. Although the recent political debate on filters has focused on pornography, denial lists are created with a much wider variety of considerations, including violence, hate speech, or even political ideas and values.

Each filter manufacturer, in its own way and according to its own standards, creates these lists. Both the list and the process by which it was compiled are typically considered by the manufacturer to be trade secrets. Those standards and processes—who decides,

how, and on what basis, a site should be included on the denial list—are not subject to outside scrutiny.

Denial lists are typically encoded in the distributed form of the programs and inaccessible to the average user. Manufacturers claim that, since most filters are relatively simple and straightforward programs, the denial lists are important competitive advantages for their products. When denial lists are inaccessible and difficult for users to modify, however, librarians cannot be sure what sites are being blocked, and they are prevented from providing patrons with access to information they may need.

Because the Web is growing so rapidly, the denial lists must also be updated frequently. New sites are added and sites are occasionally removed from denial lists in response to customer complaints. Similar to virus protection software, users are expected to download updated denial lists periodically from the manufacturers to keep the filter current.

Fact: The largest search engines are able to track only 10 to 18 percent of the Web sites accessible to the public.
Search Engine Showdown, October 2000

Fact: "Filtering software is no substitute for parental supervision. Most of the products we tested failed to block one objectionable site in five. America Online's Young Teen (or Kids Only) setting provides the best protection, though it will likely curb access to web sites addressing political and social issues."
"Digital Chaperones for Kids," *Consumer Reports*, March 2001

Fact: "In some cases, filters block harmless sites merely because their software does not consider the context in which a word or phrase is used."
"Digital Chaperones for Kids," *Consumer Reports*, March 2001

Fact: "According to a recent survey by Jupiter Research, seven out of ten parents handle the issue [of protecting children when they go online at home] by being present when their kids go online. Only 6 percent use stand-alone filtering software, products that promise to steer kids clear of undesirable material."
"Digital Chaperones for Kids," *Consumer Reports*, March 2001

Fact: "[S]chools, libraries, and other public access points continue to serve those groups that do not have access at home. For example, certain groups, such as the unemployed, Blacks, and Asian Americans and Pacific Islanders, are more likely to use public libraries to access the Internet."
NTIA. Falling Through the Net, Toward Digital Inclusion. (October 2000: Accessed: April 1, 2001) http://search.ntia.doc.gov/pdf/ fttn00.pdf)

Fact: "On Wednesday [March 28, 2001], *Chicago Tribune* columnist Clarence Page wrote a column criticizing blocking software . . . . Mr. Page's column was blocked by CYBERsitter as a result of the phrases he used in the text."
The Censorware Project

Fact: A survey discovered that many Web sites of Republican, Democratic, and other candidates

were blocked by two filtering software systems frequently used in schools.
Blind Ballots: Web Sites of U.S. Political Candidates Censored by Censorware, November 7, 2000

Fact: The conservative group Focus on the Family intends its site Pure Intimacy to be a "resource for those struggling with sexual temptations" and the "psychological bondage" that is "a major reason why individuals go online." One software filter blocked this site for violating the following categories: porno, hardcore porno, sexual, nudity.
Digital Freedom Network, "Foil the Filter Contest," September 28, 2000, http://dfn.org/Alerts/contest.htm

Fact: One software filter erroneously blocked the Web site of Republican Congressional candidate Jeffery Pollack for "full nudity," "partial nudity," and "sexual acts/tests." Once favoring filtering, he now opposes filtering and has since removed pro-filtering statements from his Web site.
"Filtering Programs Block Candidate Sites," Lisa M. Bowman, *ZDNet News*, November 8, 2000

Fact: "Filtering software-that Montgomery County, Maryland, officials had hoped to install by year's end in every public library to protect minors from inappropriate Internet content—failed to block nine out of ten adult-oriented Web sites in a recent test, according to the Alliance for

Better Library Services (ABLS), an independent citizen watchdog group."
"Filters fail to block adult sites." Clementina Pope, *The Gazette*, November 8, 2000

Fact: Government and the private sector undertake a major education and public awareness campaign targeted to families on the Internet that stresses the importance of involving caregivers in a child's online activity, the availability of both offline resources and one-click-away Internet technologies, and access to child friendly sites. Public libraries, community centers, schools and PTA's would be essential components of this effort.
Final Report of the Commission on Online Child Protection, October 2000

Role of the American Library Association

The mission of the American Library Association (ALA) is to promote the highest quality library and information services. This includes recommending model policies for local libraries to use in developing their own policies and procedures. ALA policies, such as the Library Bill of Rights adopted in 1940, are intended to protect the rights of library users to read and receive information as defined by the U.S. constitution and courts.

Fact: Local libraries are responsible for adopting their own operating policies and procedures.

Fact: The association does not endorse the use of filtering technology in public institutions, such as libraries, because it blocks legal information

that library users are entitled to under the Constitution;

Fact: The ALA has never endorsed the viewing of pornography by children or adults.

How librarians manage the Internet

Librarians have developed and continue to develop Internet management techniques with the goal of ensuring public access to information and a positive online experience for people of all ages. Some libraries (20 percent) use filters on some computer terminals, generally in children's areas.

Some libraries are experimenting with special library cards with computer chips that allow individual library users to control Internet access for themselves and their children. Unlike filters intended for use in the home, this technology can cost many thousands of dollars and must be integrated into other library computer systems. Other considerations for libraries are ease of maintenance, protecting library user privacy, respecting First Amendment rights and providing a choice for library users.

Frequently used strategies for managing the Internet include:

- Codes of conduct that define appropriate use of library computers and the Internet (e.g., no participation in illegal activities).
- Internet training classes for children and parents to teach them techniques, including how to search effectively, to ensure a positive online experience.
- Links to preselected sites such as the ALA's 700+ Great Sites for Kids (**www.ala.org/parentspage-**

/greatsites/amazing.html) and search engines specially designed for children such as KidsClick! (**http://sunsite.berkeley.edu/kidsclick!/**) or 'AOL's NetFind for Kids (**www.aol.com/netfind/kids/**).

- Privacy screens on workstations.
- Time limits and other rules for computer use in keeping with the library's mission statement and customer service practices.

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Fact Sheet: Libraries, Children & the Internet

Why is the Internet important for children?
The Internet is changing how we live, learn, work and interact with one other. If today's children are to succeed as adults, they must learn information literacy skills for every resource—new and old.

What is the role of libraries?
Libraries provide access to the information people need or want, regardless of the format in which that information appears. The Internet is another medium through which libraries meet this mission. The latest figures show that about 95% of all public libraries, including branches, now provide Internet access to the public.

What are the roles of librarians?
Librarians are partners with parents. They are there to help their community—adults and children—become information literate by teaching them how to access, evaluate, and use information. They are there to an-

swer questions and guide children to quality Web sites in the same way they recommend books and other resources.

What is the role of the American Library Association?
ALA provides guidance for libraries in developing and implementing policies to ensure the highest quality library and information services. It also takes an active role in educating parents and the public about the Internet through its Web site (**www.ala.org**) and through participation in joint initiatives such as GetNetWise (**www.getnetwise.org/**).

ALA resources for parents and children include **Especially for Children and Their Parents, (www.ala.org/alaorg/oif/children.html) FamiliesConnect (www.ala/org/ICONN/familiesconnect.html)**, online classes for parents and children about how to use the Internet; **700+ Great Sites for Kids (www.ala.org/parent spage/greatsites), Teen Hoopla: An Internet Guide for Teens (www.ala.org/teenhoopla)**; and **The Librarian's Guide to Cyberspace for Parents & Kids (www.ala.org/parentspage/greatsites/guide.html)**. ALA also encourages local libraries to offer instruction for children and adults in how to use the Internet safely and effectively.

What is an Internet filter? How does it work?
Filtering or blocking technology restricts access to Internet content through a variety of means. Two basic types of filters currently dominate the market: filters that block content containing disapproved words (keyword blocking) and filters that block access according to a list of disapproved sites (site blocking). In either case, the filter manufacturer, in its own way and according to its own standards, determines which words or sites will be blocked.

What is the American Library Association's position on filtering?
The American Library Association (ALA) does not endorse using Internet filters in libraries, because they block access to information that is legal and useful. Filters are known to block a wide range of sites, including the FBI, eBay, Planned Parenthood, The Bible and others with information many people find helpful for school, work, health and other needs.

The ALA also is concerned that the use of filters may give parents a false sense their children are protected when this is not the case. Filters are not effective in blocking all "objectionable" material, and they do not protect against pedophiles and other interactive aspects of the Internet.

The ALA strongly believes that educating children to use the Internet wisely is their best protection, now and in the future.

For greater detail, see Filters and Filtering at **www.ala.org/alaorg/oif/filtersandfiltering.html** and Children's Internet Protection Act Web Site at **www.ala.org/cipa/.)**

What about the Children's Internet Protection Act, doesn't it require libraries filter?
Late last year, Congress passed the Children's Internet Protection Act (CIPA) and the Neighborhood Children's Internet Protection Act (NCIPA) as part of a major spending bill (H.R. 4577). These Acts require libraries receiving specific federal funds to adopt Internet safety policies and technology which blocks or filters certain material from being accessed through the Internet. The ALA believes these Acts are unconstitutional and has filed a lawsuit challenging them. For up-

to-date information, check the CIPA Web site **www.ala.org/cipa/.**

What type of guidance does ALA provide to libraries on this issue?
The ALA strongly encourages local libraries to adopt and implement Internet use policies in the same way they develop other policies based on the needs of their communities. Almost all have or are developing such policies.

Some policies require a guardian's signature to use the Internet. Some require parents to be present when children use the Internet. Some set time limits. Some revoke Internet privileges for viewing materials that are offensive to others. Some link computers in children's rooms only to pre-selected search engines or sites recommended for children. Some use filters. ALA strongly encourages local libraries to offer instruction for children and adults in how to use the Internet safely and effectively.

How many libraries have experienced problems with children viewing inappropriate material on the Internet?
Few libraries report difficulties with children viewing inappropriate material online. The vast majority of children and adults continue to use the library responsibly and appropriately.

What if a library decides to install filters? Would the ALA object?
ALA's role is to recommend policies that promote the highest quality library and information services for the American people. ALA respects the right of local libraries to adopt policies that uphold this ideal and meet

the needs of their library users. Our association believes filters are not the best way to protect children.

How can parents ensure their children have a positive online experience?
There are several things parents can do. The most important is to learn about the Internet and how it works. For example, every computer has access to child-friendly search engines such as KidsClick! (www.worldsofsearching.org), developed by the Ramapo Catskill (N.Y.) Library System. Many libraries, schools and community groups offer classes and materials to assist parents with what they need to know to guide their children.

Second, set rules. There are many common sense rules that can help ensure children have a positive experience online, such as not using their real names online and never agreeing to meet someone they meet online without a parent or guardian present.

Third, teach children how to use the resource properly and to make good decisions about what they view at the library or wherever they may be.

Fourth, introduce children to the librarian and encourage them to ask for help when seeking information on the Internet.

Fifth, teach children to value their privacy and that of those around them.

There are many excellent sources of advice for parents. These include the ALA's *Librarian's Guide to Cyberspace for Parents & Kids* **(www.ala.org/parent spage/greatsites/guide.html)** and Especially for Children and Their Parents **(www.ala.org/alaorg/ oif/children.html)**; *GetNetWise*, a comprehensive guide for parents **(www.**

getnetwise.org/); and *The Children's Partnership's Parent's Guide to the Information Superhighway* **(www.childrenspartnership.org).**

Are libraries without Internet filters safe for children?
Filters do not protect children, education does. The more children and parents know about the Internet and Internet safety, the better equipped they will be to protect themselves and enjoy their time online. Libraries have a long tradition of providing quality service to children and adults in a safe place, and they continue to do so. Parents and children should still exercise common sense in the library, like any public place.

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[P. Ex. 83]

[Expert Rebuttal Report of Mary K. Chelton]

Expert Witness Report by Mary K. Chelton, MLS, MPH, PHd

1. My name is Mary K. Chelton. I am an associate professor in the Graduate School of Library and Information Studies, Queens College, City University of New York. I received my doctorate from Rutgers University in 1997, completing a dissertation entitled *Adult-Adolescent Service Encounters: The Library Context.* Prior to joining the Queens College faculty, I was assistant professor at the School of Library and Information Management at Emporia State University in Kansas, and an Adjunct Professor at the Rutgers University School of Communication, Information and Library Studies and the Graduate School of Library Science at the University of Alabama. Before joining the academic library education community, I was a public librarian for thirty years.

2. I was a cofounder of *Voice of Youth Advocates*, a review journal for librarians serving adolescents in school and public libraries; the editor of three editions of *Excellence in Library Services for Young Adults* and the principal author of first editions of *Bare Bones Young Adult Services for Public Library Generalists*, and *Latchkey Children in the Public Library* for the American Library Association. I have published over fifty journal articles on library services and collections,

particularly about youth services and popular fiction genres. I was a consultant to the Office of Library Programs, U. S. Department of Education, for both of the national fast response surveys of public libraries about their services for children and young adults. While not exclusively, most of my professional positions have been in public libraries with responsibility for services for adolescents, collection development and staff development. In 1985 I was awarded the American Library Association's Grolier Foundation Award as a librarian whose "'unusual contribution' to the stimulation and guidance of reading by children and young people exemplifies outstanding achievement in the profession."

3. I have been engaged in collection development activities in all my public library positions. I have reviewed materials locally for system-wide order lists, and ordered materials for specific branch young adult collections in the Enoch Pratt Free Library and the Prince George's County Memorial Library in Maryland. In the Westchester Library System (NY), I ran an in-house reviewing system for materials for young adults for the 38 member libraries. In the Montgomery County Department of Public Libraries (MD), I coordinated the purchase of circulating adult and young adult materials for the 22 branches and bookmobiles of the system. While in that position, I also organized the Metropolitan Area Collection Development Consortium, consisting of the collection development coordinating staff of public libraries in the District of Columbia, Baltimore, and their

respective suburbs. My *Curriculum Vitae* is attached as Exhibit A.

4. I have been asked by Jenner & Block, attorneys for the ALA plaintiffs in this case, to respond to points made by the defendants' expert witnesses, specifically regarding the educational role of the public library and the contention that Internet software filters are no more than an electronic means of doing materials selection for public library collections.

5. I have not served as an expert witness during the last four years. I am being compensated at the rate of $110 per hour.

Defendants' Claims About the Educational Mission of the Public Library

6. The government's expert witnesses erroneously claim that the contemporary public library community is somehow homogeneous and unified in its commitment to a defined "educational" mission that mandates that exclusionary criteria be applied in developing collections so that only "quality" materials for self or civic improvement are selected. *See e.g.*, Expert Report of Donald G. David ¶ 10 ("Davis Report"). Contemporary public librarians attempt to create as broad a range of collections and services as possible that are responsive to local community demographics and interests which can be housed and afforded within limitations of space and budget. Except for some classics, standard reference works, and those items in high demand because of promotion in national media, such as the Oprah Winfrey's

television show or the *New York Times Book Review* bestseller list, which everyone collects, the only thing public libraries have in common is their variety.

7. One example of this variety occurs in a published reader in public librarianship that includes four essays under a section entitled "Public Library Purpose," only one of which covers educational objectives.[1] The others examine the public library as a center of culture, a social and entertainment center, and as a comprehensive community center. The Public Library Association, a division of the American Library Association, recognized this variety when it published and promoted a manual for planning and role-setting for public libraries in 1987. Fearing that many public libraries were stretching themselves too thin for available resources, the manual outlined for the libraries a process to plan with their communities to identify and formalize various roles already in existence on which they might concentrate. Four of the roles suggested were educational—"preschooler's door to learning," "formal educational support," "independent learning" and "research center," whereas others included "community information center" and "popular materials center."[2] A subsequent publication outlines various distinctive service responses public libraries can offer their communities, ranging from "basic literacy" to "local history and genealogy."[3]

8. The meaning of "education" has always been broader and less restricted, less elitist, more idiosyncratic and contested in public library practice

than suggested by the defendant's experts who have ignored that part of public library history. *See* Davis Report ¶¶ 5-11; Expert Report of Ronald G. McCabe ¶ 35 ("McCabe Report"). Even as early as the 1876 report of public libraries to the U. S. Bureau of Education, F. B. Perkins of the Boston Public Library said:

> The first mistake to be made in establishing a public library is choosing books of too thoughtful or solid a character. It is vain to go on the principle of collecting books that people ought to read, and afterwards trying to coax them to read them. The only practical method is to begin by supplying books that people already want to read, and afterwards to do whatever shall be found possible to elevate their reading tastes and habits. Most of those who read are young people who want entertainment and excitement, or tired people who want relaxation and amusement.[4]

This attitude that public libraries should not be so elitist in their collecting was reiterated later in *The Public Library Inquiry*.[5]

9. While public libraries *are* "educational" in the broadest sense of the term—meaning that materials and services are provided that are perceived to have use and meaning for the self-directed learning of library users, public libraries are *not* educational in the academic sense of a highly selective mandated curriculum. In fact, some critics have suggested that making a public library academic in its orientation will endanger its existence.[6] Dr. Davis himself intimates that

"education" is defined very broadly where he describes the "education" mission of the public library as expanding historically from the purpose of "civilizing" to providing "utilitarian" information to encompassing a "recreational function." Davis Report ¶¶ 8-9.

10. Public libraries promote self-directed voluntary education so users can find out and learn something they are interested in. Within these parameters, the widest possible array of materials is selected so people can decide for themselves what is appropriate. The problem with mandating filters is that this decision-making ability is removed, not only from adult patrons, from parents on behalf of their children, and from those young people who cannot talk with their parents, but also from the librarians on whom these patrons depend for suggestions. There are many people who cannot get those suggestions anywhere else.

11. The notion that because of the public library's educational mission, librarians seek to collect materials only of high quality and "educational value" regardless of demand, is not supported in actual practice. "Quality" has always been a contested concept for collection development because public librarians pay as much attention to demand as they do to quality, however it is defined, and the suggestion that demand and quality never intersect is specious. Patron request forms are ubiquitous in public libraries, and most automated public library online catalog systems have built into them the capability to determine and report the number-of-copies to number-of-

holds ratios for various titles, so extra copies of materials can be ordered when demand reaches a certain level. Demand is considered at least equal to any particular item's perceived quality in terms of selection criteria in public libraries, even in youth services departments. Demand is an expression of perceived value. For example, while everyone might agree that Philip Pullman's fantasy trilogy, universally acclaimed for literary quality, should be in every public library for users' edification, no one is excluding Harry Potter books in far larger numbers of copies just because Pullman's books are better. There is no one easy consensus on what might be considered "educational" for a public library's community.

12. Many of the arguments about "quality" in public library collections historically center around the presence of popular fiction, and whether the public library should serve "recreational," as well as educational, purposes. These arguments are far from settled, even now, though in practice, all public libraries provide popular literature. Until recently, with the publication of research about adult readers and on literacy acquisition by children,[7] popular fiction was publicly considered somewhat frivolous by many librarians, even at the same time that they were purchasing it.[8] One of the major aims of public library services to youth has been reading motivation, and one of the chief ways all librarians know to motivate young people to read is with popular fiction. Suggesting that public libraries exist only to provide quality materials with educational value, as opposed to

popular materials, is not an accurate portrait of contemporary or past public library practice.

13. The government's experts argue that because public library selection criteria exclude "pornography" from traditional library collections, there is no problem with excluding it from Internet access terminals in public libraries. Davis Report ¶ 36; Expert Report of Blaise Cronin¶ 6.2 ("Cronin Report"). This is duplicitous at best and rather simplistic. There is wide disagreement on what exactly is meant by "pornographic." Public libraries already collect a variety of explicit visual and textual materials on sexuality that fall within Constitutional protection even if their presence on public library shelves is politically controversial with some members of the library's community, and might be defined by some as "pornographic." Examples are Alex Comfort's books, *Joy of Sex* and *Joy of-Gay Sex*, Nicholson Baker's *Vox*, Robie Harris's *It's Perfectly Normal*, Judy Blume's *Forever*, Madonna's *Sex*, the Boston Women's Health Collective's *Our Bodies, Ourselves*, or Magic Johnson's *What You Can Do to Avoid AIDS*. None of these titles has been found to be legally obscene; yet there are people who deem them "pornographic" because of personal objections to explicitness or ideology.

14. Besides the fact that most websites on the Internet have not been subjected to legal scrutiny in a court of law, the issue for public librarians is that electronic filters cannot limit themselves *only* to illegal material.[9] Regardless of the limitations of electronic content filters for excluding access to

obscenity, though, the suggestion that whatever would not be purchased in other recorded formats (i. e. books, audiocassettes, films, DVDs, etc.), should also not be allowed into public libraries via the Internet, ignores the main reason that selection is done in the first place, which is to make the best use of scarce budget and space resources. Librarians select in an environment of scarcity. Few, if any, libraries have the financial resources or the shelf space to collect everything that would be or interest to their users. Librarians must therefore select the resources that would *best* meet their users' self-directed needs within the scope of their resources. On the World Wide Web such scarcity does not exist, and library users can have access to all the sites that meet their needs; however filters, by blocking sites, create an artificial scarcity. Since the Internet is so vast, it is ludicrous to equate it with the physical space limitations in even a large public library. Public librarians see the Internet as a way to eliminate the real scarcities they have coped with for years. The idea that filters should now manufacture virtual scarcity because of the limitations of real scarcity presents a false analogy as argument.

15. Public librarians have not demonstrated any reluctance to undertake responsibility for Internet resources within the library setting. While waiting for the results and possible applications of research library groups working on this problem,[10] they have simply followed a different model than the traditional select-or-deselect dichotomy it is suggested they use with material resources. It should be said that the old model was never

absolute inclusion or exclusion anyway; it was simply adjusted toward inclusion when demand was determined to be high enough, or perceived user literacy was low enough to factor it into selection criteria. The model that public librarians have used for Internet resources is closer to that used when providing readers advisory services—offering suggestions of Internet sites on their own websites and in-house terminals that users are free to visit or ignore.[11] Just a few examples include Pasadena (CA) Public Library's "Selected Internet Sites by Subject" (www.ci.pasadena.ca/us/library/subject-links.asp), Hennepin County (MN) Public Library's "eLibraries" (http://www.hennepin.lib.mn.us/pub/library_guide/elibraries/about_elibraries.html), Suffolk County (NY) Library System's "SuffolkWeb's Places for Kids & Teens" www.suffolk.lib.ny.us/youth/kids.html, Multnomah (OR) Public Library's "Homework Center—Homework Topics" www.multnomah.lib.or.us/lib/homework/, Atlanta Fulton (GA) Public Library's "Search the Internet" www.af.public.lib.ga.us/internet_links/index.html, County of Henrico (VA) Public Library's "Internet Tools" www.co.henrico.va.us/library/, Topeka Shawnee County (KS) Public Library's "Useful Links" www.tscpl.org/Library/tscplweblinks.htm, Norfolk (VA) Public Library's "Index to Websites www.npl.lib.va.us/sites/sites.html, and the Queens Borough Public Library (NY) "Internet Sites by Subject" www.queenslibrary.org/internet/index.asp.

16. Public librarians *must* integrate the Internet into their services for another reason—many reference

resources that used to be selected by public libraries in print formats are no longer available in print. These resources are moving to web formats and being licensed to public libraries who, in turn, provide access for their users off-site as well as in the library, with far more powerful searching capability than print ever allowed. Examples in the "Virtual Reference Collection" of the Suffolk County [Public] Libraries in New York include almanacs, dictionaries, directories, encyclopedias, government information, indexes, maps, newspapers, and compilations of statistics (vrc.suffolk.lib.ny.us/). Perhaps the question that should be raised is not whether public librarians are reluctant to select and deselect among Internet resources, but rather, whether electronic filters will deny access for public library users to Internet resources already selected by public librarians for them.

17. The Internet is not like an approval plan, as Dr. Davis suggests. Davis Report ¶ 32. First of all, approval plans are designed primarily by and for academic, not public, libraries, so that a supplier or publisher assumes the responsibility of automatically sending all materials that fit a library's profile specified in terms of subjects, levels, formats, prices, etc. The library has return privileges for anything it cannot use. The only kinds of preselection plans generally used in public libraries are review copies of juvenile materials to examine prior to purchase, primarily to look at the cover art of picture books, but these copies are sent usually at the largesse of individual publishers, not because the librarians have submitted

a profile based on their collection development criteria. The Internet does not send anything resembling a book to a library so it can be rejected before being purchased. Someone has to use a browser on a computer terminal to search for it. The Internet cannot be preconfigured according to a profile using filters because of the under or over breadth of what is excluded. If anything, providing Internet access in a public library is more analogous to providing users with an encyclopedia than an approval plan for staff.

18. Americans do understand that contemporary public library collections and services are intended to support their educational purposes, but they also want popular reading materials, as the reserve queues in any local public library, and the 51% of respondents on the 1994 pamphlet cited by Mr. McCabe, can document. *See* McCabe Report ¶ 10. In terms of "educational purposes," though, it is ironic that many of the very topics on which information is most frequently requested by secondary school students in public libraries for overt formal educational support for school papers would be unavailable to them with filtered Internet access. Some of these requests for information I am aware of include AIDS, sexually transmitted diseases, rainforest and environmental problems, capital punishment, free speech, legalization of drugs, tattooing and body piercing, abortion, the death penalty, teen suicide, eating disorders, racism/Ku Klux Klan, violence in schools and among teens, women in the military, gays in the military, gay marriage, gay adoption, Native Americans, astrology, dreams, witchcraft, organized crime/serial

killers, teen problems such as suicide, date rape, domestic violence, and eating disorders.[12]

Filters Are Not Just Another Form of Selection

19. The government's experts claim that filtering and selection are synonymous, *see* Cronin Report ¶¶ 4.1-4.6, but there is one profound difference between selection and filtering that they overlook—selection is intended to include content; filters are intended to exclude it. The fact that a librarian does not include something in a collection does not necessarily make the item bad. It may just be redundant. Filters exist to exclude content, the presumption being that whatever is excluded by the filter is bad. Selection presumes innocence. This distinction has been a bedrock of library collection development thinking since it was so clearly stated by Lester Asheim in 1953.[13]

20. Another distinction is about who is making the selection decisions. The review sources used by librarians have stated policies and reviewers are identified, usually other MLS graduates or subject specialists, such as those used in a source like *Science Books and Films* or *Software and CD-ROM Reviews On File*. The academic credentials and professional ethics of staff working on electronic filtering systems are generally unknown, and the criteria used difficult to determine except through the effects of the filter after the fact on what is blocked or accessed. Librarians also select materials that have not been reviewed if they determine enough user demand; whereas filters cannot automatically unblock something for

the same reason because they do not have the human ability to make the determination.

21. The defendants' experts contradict themselves. If public library selection decisions are made pursuant to specific policies and guidelines open to public and professional examination by human beings with knowledge of local communities using professional knowledge and judgment, as suggested by Dr. Davis, Davis Report ¶ 15, then filter blocking decisions are not the same thing, as Dr. Cronin claims, Cronin Report ¶¶ 4.1-4.6. Public librarians are not just human filters, because the selection process is not mechanical. Even taking the position that public library selection is biased only toward what is "worthy," to suggest that filters can evaluate "worthiness" and exclude only items that are not worthy is simply incorrect. Librarians do select materials by topic and subject matter, which filters can emulate somewhat, but they also select by treatment of the subject, orientation of the author, intended audience, knowledge of their specific service community, etc., none of which filters have the capacity to do.

22. While selection may still be an important role for public librarians in general, there are several trends in the field as it is currently practiced that offer competition for the primacy suggested by Dr. Davis. *See* Davis Report ¶¶ 16-17. The rise of centralized collection development units limits the number of public librarians performing this function within large public library systems such as those in the Baltimore-Washington area, and in Chicago. Collection maintenance, collection

promotion and the ongoing communication of user needs to the centralized department are more important so that relevant materials can be purchased efficiently while they are still available. Access to electronic and web-based resources is at least as important in reference services as selecting the resource in the first place, since increasingly, many reference sources can no longer be purchased for the collection in print formats. The organization of access is at least as important as selection decisions. Frontline working librarians' time in many public library systems is now primarily spent organizing public programs and providing reference services, with selection relegated to a small centralized staff.

23. Dr. Cronin claims that labeling already occurring in public libraries is no different from the labeling provided by filters. Cronin Report ¶¶ 4.3-4.5. Labeling of materials in public libraries and review media used by public libraries is done to maximize access to resources for users, not to keep them from finding things, which is the purpose of filters. Public librarians do label and categorize all the time, but they do it to help people find content, not to proscribe it. Genre labels for mysteries and location labels for picture books are never intended to prevent anyone of any age from finding the labeled material. Librarians do not label materials by keyword frequencies and word co-occurrences, which are the basis of most filter programs. Librarians do not label for content like the Motion Picture Association voluntary movie rating system, although they do make MPAA labels available as information to users on videos

in their collections that have been rated. Only one review journal, *Voice of Youth Advocates*, rates what is reviewed, and then only with a dual rating attached to each review indicating quality and popularity. (This is coincidentally the journal I helped establish). The assumption that filters are an aide to librarians in the categorization process is a fundamental misunderstanding of the purposes of labeling in public libraries, which is to create ease of access, not to block access. Mandated filters are not an extension, but rather a displacement, of librarian judgment.

24. Dr. Cronin suggest that outsourcing of all collection development to non-librarians is acceptable practice. Cronin Report ¶ 5.8. This is not considered acceptable practice in most public libraries, with the possible exception of opening day collections for new libraries, and for foreign language materials and cataloging, both of which are only outsourced within very strict guidelines for suppliers. Those suppliers, such as Brodart, usually have an MLS directing the project. The most notable instance of outsourcing of general selection to non librarians occurred in Hawaii's public libraries. It is generally considered an unmitigated disaster because librarians working directly with the public were not involved in determining the criteria sent to the vendor by the library system's management, and the resulting vendor choices not only did not take local interests and geography into account, but also ignored format preferences such as rack-sized paperbacks for young adult selections.[14] Regarding filters as just one more type of outsourcing without allowing

librarian access to and determination of the criteria by which material is filtered runs the risk of repeating the Hawaii debacle for public library use of the Internet.

25. Web-based resources can be subjected to the same criteria as print materials, which is exactly what public librarians are doing when they select websites to suggest for their users. To expect them to pick and choose among millions of websites, however, given the dynamic character of the Internet and the resources available to public libraries is totally unrealistic, when they can give those choices directly to the public with safeguards far less restrictive than those proposed by CIPA.

26. Although the same general guidelines are applicable, however, there are significant differences in practice between the management of digital resources and the management of print resources. The economic model of purchasing within a framework of scarce resources of space and money, with costly interlibrary loan as a backup, simply does not apply. If anything, the role of the public librarian becomes less that of limiting selector and more that of expansive information retriever. Being able to use the Internet for information retrieval is like having cheap interlibrary loan access available all the time. It also allows for information provision all the time, which the expense of keeping physical buildings open and staffed did not previously allow. Additionally, digital resources on the Internet, both licensed and free, allow public librarians to provide useful information for their users on topics they may previously

have had difficulty selecting, because time, money and space constraints did not allow them to do more than anticipate generalized needs rather than highly individualistic ones. Examples would include specialized information for hobbyists and collectors.

27. Contrary to the arguments of the defendants' experts, the goals of CIPA are not congruent with the historical assumptions underpinning the practice of public librarianship, because those assumptions as presented are biased. Public libraries do not impose materials within a limited notion of what they perceive to be good for people on a community to retain their funding. Local public libraries meet their users' needs or they are not supported. The assumptions presented not only ignore contemporary public library practice, but they also vastly underestimate the range of common values found in public library service communities across the country and the difficulty of determining them.

Signed:

/s/ MARY K. CHELTON
MARY K. CHELTON

Dated: November 29, 2001

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[P. Ex. 103]

[Multnomah County Library Parents Guide]

Parent's Guide to Multnomah County Library

[IMAGE OMITTED]

All children have two wonderful resources for learning: their imagination and curiosity. Parents are always trying to answer their children's endless "How?" and "Why?" questions. Fortunately, libraries and librarians can help parents answer these unending questions, send kids on wondrous adventures, and provide them with the resources they need to learn and grow.

Welcome to Multnomah County Library! Here are answers to some questions you may have about libraries, along with suggestions for helping children become lifelong learners and library users.

What does Multnomah County Library offer my family?

Multnomah County Library offers much more than books. Visit for free entertainment and learning in the form of books, videos, music and live programs. You will find items for babies, toddlers, preschoolers, school-age children and teenagers.

Multnomah County libraries have:

- **special areas for children and teens with age-appropriate books and materials.**
- **a summer reading game, storytimes, book discussions, workshops and shows for young people. Programs such as these help kids learn**

to enjoy libraries and use them for information and entertainment.

- **computers that are reserved for children and loaded with educational games.** You may choose a filtered Internet search from any library computer with Internet access.
- **award-winning Web sites just for children and teens.** KidsPage has activities, booklists and links. Homework Center offers links to librarian-reviewed Web sites that specifically concentrate on K-12, homework-related subjects. Outernet is for teens. Visit www.multcolib.org.
- **resources for parents.** Check out books, magazines, videos, programs and Web pages especially of interest to parents. Booklists like "Babies Love Libraries" and "Books to Read Aloud" may help you discover items for your family.

How do librarians at Multnomah County Library work with children?

Multnomah County Library staff members are always happy to help you locate reading materials to suit your and your family members' interests, tastes and needs. Don't hesitate to ask for help. Librarians and library assistants are trained to help you locate specific books, books on a particular subject, or books for a particular age group.

In addition to answering your questions in person, librarians also create booklists and Web sites to guide your search for answers. Library employees lead storytimes for babies, toddlers and preschoolers, and they develop programs appropriate for the children in their communities. They visit neighborhood schools, and

they help teachers find materials and resources to enhance their lessons.

How do librarians at Multnomah County Library select books and other materials?

The majority of books and other materials selected have been reviewed and recommended by professional librarians or reviewers. Criteria may include popular demand, literary or artistic merit, and informational value. Purchases may also be made upon the recommendation of book discussion groups or upon a library user's request. Selection is an inclusive process, where librarians seek materials that will provide a broad range of viewpoints and subject matter.

Multnomah County Library provides books and other materials to meet the informational, educational, cultural and recreational needs of the people of Multnomah County. Multnomah County Library upholds the principles of intellectual freedom and the public's right to know by providing people of all ages with access and guidance to information, books and other materials that reflect many points of view. This means that, while the library has thousands of items families want, like and need, it also will have materials that some parents may find offensive to them or inappropriate for their children.

How can I help my child make the best use of the library?

Parents or legal guardians are responsible for deciding what books, other library materials, and level of Internet access are appropriate for their children or teenagers. Your participation in selecting and sharing books with your child is very important.

We encourage parents to help their children and teenagers select library resources in keeping with their family values. Multnomah County Library supports your right to choose books and other library materials for yourself and your family. We also support your right to choose a filtered Internet search by offering each user the ability to activate filtering software.

As the person responsible for your child, it's important for you to know that:

- All library materials are available to library users of any age.
- The library may contain books and other materials that some parents find inappropriate for their own children and teenagers.
- Young people mature at different rates, and readers' tastes, values and philosophies vary. **You know your children best and can best decide what library materials are appropriate for them.**
- The library respects the privacy of all library users, no matter their age. **We do not give out information about titles of books checked out, the number of books overdue, or the titles of books overdue, except to those who are able to provide the borrower's library card or library card number.**
- A library card allows a library user to access computer resources, the Internet. **We encourage parents to discuss with their children and teenagers the types of Internet searches that are in keeping with their family's values. Staff can provide instruction on activating blocking software on the library's computers. Children's computers will help guide your child to many kid-friendly sites.**

BEST AVAILABLE COPY

Parents and children are encouraged to read "Child Safety on the Information Highway," available free from any library location or on the library Web site (www.multcolib.org.).

Ten tips for families using the library

1. **Establish a family routine of going to the library on a regular basis.** Visiting the library with your children, once a week or once a month, encourages young people to use the library both for learning and pleasure and teaches them how to find what they need.
2. **Allow your kids to explore the library.** Children and teens are naturally attracted to materials intended for them. They are generally not attracted to materials that are too advanced for their reading or maturity levels. By asking questions and learning to find their own answers, young people learn to think for themselves, to compare and contrast differing opinions, and to analyze what they see and hear.
3. **Ask your librarian for suggestions about materials that are appropriate for your children's ages, maturity levels, knowledge and interests.** Read books and brochures that review materials for children or teens. Review this information yourself to determine if it is what you think your children may like or need. While librarians and resource lists can provide guidance, you know your children and family needs best.
4. **Discuss your family rules regarding library use with your children.** If you are concerned they will not respect your wishes, it is your

responsibility to visit the library with them or monitor their use of the library's remote services.

5. **You may decide to encourage your older children to visit the library alone.** When you can't go along, show an interest in what your children bring home from the library. Have a special shelf for library materials and take time to familiarize yourself with their borrowed items. Praise their independence and responsibility for caring for library materials and returning them on time.

6. **If you feel an item is inappropriate for your child, take the opportunity to express your views and provide guidance.** When you return the material, simply ask library staff to help you find something else from among the many choices available.

7. **Be aware that many young people seek information from libraries on very serious personal issues they may be embarrassed or afraid to discuss with an adult.** A factual library book, unlike hearsay from friends, can ease their fears or even keep them safe from harm. Remember that just because a child is reading or viewing something, it doesn't mean that he or she is participating or approves of it. If you have a concern, take this opportunity to discuss it with your child.

8. **Be a role model for library use.** While your child is browsing, look for books, magazines, music and movies for yourself! Nothing teaches children better than seeing you use and enjoy the wide range of materials available.

9. **Get to know your librarians.** Their expertise can help you and your children get the most out of the library.

10. **Ask for the item you want.** If the library doesn't already own it, library staff may be able to locate similar materials, borrow it from another library or purchase it.

For more information about how your library can meet your family's needs, talk to your librarian.

Multnomah County Library Home Page
www.multcolib.org

Multnomah County Library KidsPage
(for ages 14 and younger)
www.multcolib.org/kids/

Multnomah County Library Homework Center
www.multcolib.org/homework/

Multnomah County Library Outernet
(for ages 13-19)
www.multcolib.org/outer/

This brochure is available in accessible format upon request. Please call Independent Living Resources at 503.232.7411 (phone) or 503.232.8408 (TTY).

09/01

[P. Ex. 104]

[Multnomah County Library Internet Use Policy]

A GUIDE TO MULTNOMAH COUNTY LIBRARY'S POLICIES REGARDING INTERNET USE

Multnomah County Library Acceptable Use of the Internet

ACCESS TO INTERNET RESOURCES

1.1 Multnomah County Library is committed to providing free and open access to informational, educational, recreational and cultural resources for library users of all ages and backgrounds. Throughout its history, the Multnomah County Library has made information available in a variety of formats, from print materials to audiovisual materials. The library's computer system provides the opportunity to integrate electronic resources from information networks around the world with the library's other resources.

1.2 The Internet, as an information resource, enables the library to provide information beyond the confines of its own collection. It allows access to ideas, information and commentary from around the globe. Currently, however, it is an unregulated medium. As such, while it offers access to a wealth of material that is personally, professionally, and culturally enriching to individuals of all ages, it also enables access to some material that may be offensive, disturbing and/or illegal, inaccurate or incomplete. Users are encouraged to be good information consumers by evaluating the validity of information accessed via the Internet.

1.3 In introducing the Internet as an information resource, the library's goal is to enhance its existing collection in size and depth and as a public access agency,

give opportunity to anyone who wishes to participate in navigating the Internet, both in the library and at home through dial-up service.

1.4 Library staff will identify specific starting points for searches on the library's home page that are appropriate to the library's mission and service roles. The library cannot control or monitor other material that may be accessible from Internet sources because the Internet is a vast and unregulated medium with access points that can and do change often, rapidly and unpredictably. Parents and children are encouraged to read "Child Safety on the Information Highway," available free from any library location.

IN-LIBRARY ACCESS

2.1 The library upholds and affirms the right of each individual to have access to constitutionally protected material. The library also affirms the right and responsibility of parents to determine and monitor their own children's use of library materials and resources.

2.2 Library staff is available to provide assistance and to help identify appropriate sites. The KidsPage, Outernet, Homework Center and Electronic Resources have been provided to assist users in finding age-and topic-appropriate sites. Parents and children are encouraged to read the pamphlet, "Child Safety on the Information Highway," available free from any library location. The user, however, is the selector in using the Internet and makes individual choices and decisions.

In order to make Internet resources available to as many users as possible and to ensure that this resource is used in a manner consistent with library policies, the following rules shall apply. Specific terms of use may vary by location.

CONDITIONS AND TERMS OF USE IN THE LIBRARY

3.1 Depending upon the demand placed on Internet resources at any particular library agency, users may have to sign up for a limited number of time slots per day. If this is required, users must sign up in person. Reservations will not be taken over the phone. Latecomers forfeit their time if more than 10 minutes late.

3.2 Misuse of the computer will result in the loss of computer privileges, potential loss of library privileges and possible prosecution. Such misuse includes, but is not limited to, using the computer for illegal activities; hacking into the library computer system or any other computer system; damaging or attempting to damage computer equipment or software; interfering with systems operations, integrity or security; gaining unauthorized access to another person's files; sending harassing messages to other computer users; altering or attempting to alter the library computer's settings; and violating copyright laws and software licensing agreements.

3.3 The library's computers are set up for optimal usage by a single individual. In some cases, such as a parent/guardian with children, it may be important for two or more people to work together at a computer. Otherwise, because of limited space, a maximum of two persons may sit/work together at any one computer.

3.4 All users are asked to respect the privacy of other users and not attempt to censor or comment upon what others are viewing.

11/00

Multnomah County Library

[P. Ex. 105]

MULTNOMAH COUNTY RFP 1.61

LIBRARY

[Seal Omitted]

[illegible] N.E. Russell Street, Portland, OR 97211-3796, Phone: (503)988-5402, Fax (503)988-5411

Ginnie Cooper, Director of Libraries

AA Memo 41/01
Posted

MEMORANDUM

TO: All Staff

FROM: Ruth Metz, Deputy Director

DATE: May 18, 2001

SUBJECT: INSTRUCTIONS TO STAFF CONCERNING RULES OF BEHAVIOR: CHILD PORNOGRAPHY AND RELATED QUESTIONS

Staff has posed the following questions related to patron conduct. These responses come after considerable review with the county attorney's office. Essentially, this is not new information to most staff. However, it is helpful to revisit these and related questions periodically, particularly with the advice of the county attorney.

Should you have questions or wish to discuss this information further, please contact me. If you wish me to meet with your unit to discuss these or related instructions, please contact me through your unit leader to make the arrangements.

1. Is viewing child pornography on a public search station illegal?

Answer: In theory yes. A prosecution may be brought under the state law, specifically ORS 163.684 to 163.687. ORS 163.684 to 163.687 provide for degrees of criminal liability for "encouraging child sexual abuse" by a person who knowingly "possesses or controls" a visual recording of sexually explicit conduct involving a child for the purpose of sexual arousal. The key is whether the person operating the computer to view the visual images could be found to be "in possession or control" of that image. To the extent it can be proved that a person had the requisite knowledge and was using it for sexual arousal, it is possible that person could be presecuted.

2. (a) Are Library employees subject to criminal prosecution under ORS 163.665-163.695 if a patron is found viewing child pornography on a Library computer?

2. (b) Are Library employees subject to criminal prosecution under ORS 167.065-167.095 if a patron is found to have used Library materials or resources, (i.e. computers or hard copy media) to furnish, send or exhibit obscene materials to minors or to otherwise disseminate obscene materials?

Answer to 2(a): No. ORS 163.665 to 163.695 establish criminal conduct for various activities relating to the possession, creation, use, dissemination and development of child pornography. The provision do not apply to Libraries except for ORS 163.670. ORS 163.670(1) provides:

> "A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a photograph, motion picture, videotape or other visual recording."

It is illegal for a library employee to use a child in the *creation* of sexually explicit material. As the extent of patron activity in the Library would presumably be limited to downloading or viewing such material, this should not be an issue, with respect to the criminal liability of the Library or its employees.

Answer to 2(b): No. ORS 167.065-167.095 proscribe various activities with respect to the dissemination of obscene materials to minors and obscene materials generally. Like the child pornography statutes, there is also a general exemption to Libraries and Library employees acting within the scope of their employment, from prosecution under these status. See ORS 167.085 and ORS 167.089.

3. If a library staff person suspects that someone is viewing child pornography from a library computer search station, what should he/she do about it?

Answer: Keep in mind that library staff is not authorized to routinely, actively monitor what anyone is looking at on the public computers. Often, however, staff becomes aware of a particular situation because the image on the screen is in their line of vision or because someone else in the library has seen the screen, found it objectionable and brought it to staff's attention. Occasionally, the computer user has called on the staff person to assist him or her while the image is visable.

The advice of our legal counsel is that if staff sees a patron viewing what appears to be child pornography the staff person may call the police to explain the circumstances. It is then up to the police to decide whether further investigation by the police is warranted.

4. In instances when a patron reports suspected viewing of child pornography to a staff member, should the staff member make the phone call or should the reporting person be asked to make the call?

Answer: A patron who reports they have witnessed suspected viewing of child pornography on a library search station is welcome to call police on a library telephone if they choose to do so. It is also appropriate for the staff member receiving the report to make the call if the witness prefers not to do so. Under some circumstances, telling the reporting patron he must make the call may seem unresponsive.

The staff should treat a report of this nature, as with other incidents of inappropriate behavior, as an incident report. This would include obtaining the name of the contact number for the person reporting the incident. This enables police to follow up with the person or persons who witnessed the incident should the police decide to do so.

5. Should staff members try to identify the person who reportedly viewed child pornography or that he believes is viewing child pornography?

Answer: As in any incident, a physical description will be useful should the police ask for this once you have contacted them to discuss the incident.

6. If I know a library patron's name may I reveal the name to police when I am explaining the circumstances?

Answer: Yes. If you know the library patron's name you may use it in discussing the circumstances with police. Reporting the name alone does not breach confidentiality. However you should not release any other information about the patron from library records without prior authorization from the county attorney. This authorization would come by way of the library director's office. See the following question regarding law enforcement requests for patron information.

7. How should staff members respond to law enforcement requests for information contained in a library patron record?

Answer: Staff should advise the law enforcement official that library patron records are exempt from disclosure by library policy and by ORS 192.502(22).

The county attorney has advised us that all requests to disclose library patron records must be in the form of a subpoena. The county attorney will then determine the appropriate response to the subpoena.

8. What constitutes a "patron record"?

Answer: Multnomah County Library defines a patron record as that personal, identifying information we have in print or electronic form about a particular library user. Examples are address, phone number, social security number, birth date and other registration information. This includes any information that connects a particular patron to library resources or services he has used (e.g. circulation records, interlibrary loan requests, reference questions asked, materials used in house, use of electronic search stations, sign-up sheets for programs or classes, etc.)

9. What is the responsibility of staff with regard to a police request to "save" information (e.g. who was using a particular PC at a particular time, who had a particular book checked out, etc.) for a future subpoena or court order?

Answer: Once subpoena has been received we need to save the requested records(s) until the county attorney determines whether or not they must be released. Absent a subpoena we will treat all patron records in accordance with our usual retention schedule for those particular records.

10. What should we do if requested by a county parole officer to notify him when staff suspects sex offenders are looking at sexual content on our PCs?

Answer: Library rules do not authorize Library employees to monitor lawful activities of patrons on computers nor to discern when activities are legal or illegal. If staff sees a person known to be a registered sex offender viewing child pornography on a library computer, staff may report that activity to the police in the manner advised under question number 3 above.

11. What should library staff do when requested by parole officers to post information on public bulletin boards about a sexual predator in the neighborhood?

Answer: The branch manager or his designee determines this, in compliance with the Multnomah County Library's public bulletin board posting guidelines.

12. When is it appropriate to ask the police to investigate "suspicious behavior"? For example, branch staff has seen what they believe may be a sexual predator's grooming behavior towards young boys. They haven't seen anything overtly illegal but they see an adult male taking an unusual and frequent interest in a young boy who he's met at the library.

Answer: It may be appropriate to contact the police to explain the circumstances. This assumes the decision to do so has been reached after careful deliberation between the staff observer and a supervisor or the person-in-charge. It is appropriate to consider contacting the police when "suspicious behavior" causes concern for the immediate safety or security

of the library or anyone in it. The police will determine whether or not to investigate further.

13. When is it appropriate to ask the computer support staff to look from the computer room at what is being done on a particular PC? When might this be a breach of patron confidentiality and when is it a legitimate tool to use to investigate possible abuses of our own rules of behavior?

Answer: It is appropriate to alert the computer room staff to situations that could potentially compromise the security or functionality of the library's computer system. The bullets under # 12 of the search station policy, especially the 2nd through 8th relate to this.

Otherwise, it is not appropriate to ask the computer room staff to look at what is being done on a particular PC. Should situations arise when you are in doubt, make inquiry to the PIC, ASIST Supervisor (Lucien Kress), IT Manager (Lance Murty) or directors of Central Llibrary (Cindy Gibbon) or Community Services (Janet Kinney). Automation Services staff should direct requests or inquiries from staff to the ASIST supervisor or the IT Manager.

The statement in the search station policy about electronic monitoring is a disclosure to the public that we make on the advise of the county attorney. The fact that the library is capable of doing electronic monitoring doesn't mean we should.

Often, staff is looking for confirmation of what they are visually observing when they ask for a computer to be monitored by computer room staff. For example, if you suspect someone is viewing child pornography, it is not appropriate nor is it necessary to ask the computer room staff to electronically monitor the PC. Our rules of conduct and search station policies authorize staff to act on their good judgement. If in doubt, confer with a supervisor or PIC.

[P. Ex. 106]

[Multnomah County Library Behavior Rules]

Behavior in the Library

BEHAVIOR RULES GOVERNING THE USE OF MULTNOMAH COUNTY LIBRARY

The Multnomah County Library's Behavior Rules have a threefold purpose: to protect the rights and safety of library patrons, to protect the rights and safety of staff members, and to preserve and protect the library's materials, facilities and property.

Definitions and Scope

These Behavior Rules shall apply to all buildings, interior and exterior, and all grounds controlled and operated by the Multnomah County Library (such buildings and grounds are hereafter referred to as the "premises") and to all persons entering in or on the premises.

Listed below are the library's Behavior Rules. Persons who violate these rules may be ejected from the premises and excluded from all library premises for the period of time listed below.

Behavior Rules

Any person who violates rules 1-4 while in or on library premises will be immediately ejected and excluded from all Multnomah County Library premises without first being given a warning. Any person so excluded shall lose all library privileges for a period of up to three years, and the incident will be reported to the appropriate law enforcement agency.

1. Committing or attempting to commit any activity that would constitute a violation of any federal, state or local criminal statute or ordinance.
2. Engaging in sexual conduct, as defined under ORS 167.060, including, but not limited to, the physical manipulation or touching of a person's sex organs through a person's clothing in an act of apparent sexual stimulation or gratification.
3. Being under the influence of any controlled substance or intoxicating liquor. Controlled substance is defined in ORS 475.005.
4. Possessing, selling, distributing or consuming any alcoholic beverage, except as allowed at a library-approved event.

Any person who violates rules 5-17 while in or on library premises will be given up to one warning at the discretion of library staff; then the person will be asked to leave the premises for the day. Subsequent offenses by that person will result in that person's immediate ejection and exclusion from all Multnomah County Library premises. Any person so excluded shall lose all library privileges for a period of up to one year.

5. Engaging in conduct that disrupts or interferes with the normal operation of the library, or disturbs library staff or patrons, including, but not limited to, conduct that involves the use of abusive or threatening language or gestures, conduct that creates unreasonable noise, or conduct that consists of loud or boisterous physical behavior or talking.

6. Using library materials, equipment, furniture, fixtures or buildings in a manner inconsistent with the customary use thereof; or in a destructive, abusive or potentially damaging manner; or in a manner likely to cause personal injury to the actor or others.
7. Disobeying the reasonable direction of a library staff member or library security officer.
8. Soliciting, petitioning, distributing written materials or canvassing for political, charitable or religious purposes inside a library building, including the doorway or vestibule of any such library building or in a manner on the library premises that unreasonably interferes with or impedes access to the library.
9. Interfering with the free passage of library staff or patrons in or on the library premises, including, but not limited to, placing objects such as bicycles, skateboards, backpacks or other items in a manner that interferes with free passage.
10. Placing personal belongings on or against buildings, furniture, equipment or fixtures in a manner that interferes with library staff or patron use of the library facility.
11. Bringing bicycles or other similar devices inside library buildings, including, but not limited to, vestibules or covered doorways if no bicycle rack is provided within that area.
12. Operating roller skates, skateboards or other similar devices in or on library premises.
13. Parking vehicles on library premises for purposes other than library use. Vehicles parked in violation of this rule may be towed at the owner's expense.

14. Smoking or other use of tobacco.
15. Eating and drinking inside library buildings, except as allowed at a library-approved event. Drinking water at a library-provided water fountain is not a violation of this rule. At Central Library, items purchased at the library coffee bar may be consumed in the Popular Library section only.
16. Bringing animals inside library buildings (with the exception of service animals), except as allowed at a library-approved event.
17. Violating the library's Computer Search Station Policy, which is posted at every search station table.

Any person who violates rules 18-21 while in or on library premises will be given up to two warnings at the discretion of library staff; then the person will be asked to leave the premises for the day. Subsequent offenses by that person will result in that person's immediate ejection and exclusion from all Multnomah County Library premises. Any person so excluded shall lose all library privileges for a period of up to six months.

18. Sleeping in or on library premises.
19. Improperly using library restrooms, including, but not limited to, bathing, shaving, washing hair and changing clothes.
20. Using personal electronic equipment at a volume that disturbs others, including, but not limited to,

pagers, stereos, televisions and cellular telephones.

21. Leaving one or more children under the age of 6, who reasonably appear to be unsupervised or unattended, anywhere in or on library premises.

Any person who violates rules 22 and 23 while in or on library premises will be excluded from the premises until the problem is corrected:

22. Entering library buildings with bare feet or a bare chest.
23. Disturbing others because of offensive body odor.

Please feel free to send comments and suggestions.

The address for this site is: http://www.multcolib.org/about/pol-use.html

Last updated: Friday, June 30, 2000

[P. Ex. 109]
[Expert Report of Joseph Janes (without attachments)]

EXPERT REPORT OF JOSEPH JANES

I. Background

As a library educator with expertise in networked information systems such as the Internet, I have been asked to provide expert testimony in this case. I have previously provided expert testimony in one case, *Mainstream Loudoun et al.* v. *Board of Trustees of the Loudoun County Library*. I am providing my services in this case for free. Some of the exhibits that are attached to this report may be introduced during my testimony. At this time, I do not anticipate using any additional exhibits.

I hold three degrees, all from Syracuse University: an A.B. in Mathematics with a dual major in Information and Library Studies, a Masters in Library Science, and a Ph.D. in Information Transfer. A copy of my curriculum vitae is attached as Exhibit 1. I am currently Assistant Professor in the Information School of the University of Washington. I have been teaching at the graduate level since 1984 in library schools at Syracuse, the University of North Carolina, the State University of New York at Albany, and the Universities of Michigan and Washington. I have taught introductory courses in the areas of online search and retrieval, the use of technologies in library work, statistics and research methods, and reference. I have taught advanced courses or seminars in most of these areas, as well as the development of Internet-based library applications and services, the impacts of technology, and relevance research.

I was also the founder and Director of the Internet Public Library, an online library available to the public at http://www.ipl.org. In addition, in the last several years, I have consulted with the New York Public Library in the building of their new Science, Industry and Business Library, with the Henry Ford Museum in Dearborn, Michigan on Internet applications there and with the Multnomah County Library in Oregon on new reference initiatives. I was a co-founder, with Louis Rosenfeld, of Argus Associates, Inc., an Internet consulting and information architecture firm. I have given presentations, including keynote addresses, at major conferences in the United States, Canada, Great Britain, and Japan, the Netherlands, and have been interviewed on technology/library issues on National Public Radio and the BBC.

My creative and research interests include investigating ways in which the emerging information environment is affecting the practice of librarianship, and how the principles of librarianship can best be used to make this environment easier to use. This includes:

- questions about the use of networked information resources (such as those found on the Internet) to answer ready-reference and more detailed research questions,
- development of network-based services and systems which take advantage of concepts and practices from librarianship,
- thinking about ways in which librarianship can and should evolve to adapt to and take advantage of high-speed computing, high-bandwidth communication and mass interconnection.

I will be providing expert testimony in this case about the degree to which blocking software is blocking access to Internet sites that would be of use or interest in a library context.

II. Methodology

In September of 2001, I received a request from Christopher Hansen of the American Civil Liberties Union to file an expert report in this case to evaluate whether a sites that had been blocked by various Internet blocking software packages were examples of "overblocking", that is, were blocked but would be of use, value or interest in a library collection or context. I agreed to participate, and we discussed the nature of the work to be done, including drawing a random sample of those sites and evaluating them individually.

On September 21, 2001, I received a file via electronic from Ben Edelman. That file contained a list of 6775 addresses of Web sites. To provide a high degree of confidence in the results, I chose to draw a sample of 859 of those sites. Sampling theory dictates that a sample of that size would produce a 95% confidence interval of ±2.5% around my estimate of the proportion of sites that were overblocked; that is, in 19 of 20 cases, the true proportion of overblocked sites in the population of 6775 would lie within 2.5% of the proportion found in the sample of 859. See Exhibit 2.[1]

I downloaded the list into SPSS, a popular and frequently used statistical software package. In addition to the list of sites, the file included categories under which three of the blocking software packages had blocked each site. I performed simple frequency analyses on the list to determine the proportions of sites blocked by each package in each category. For

example, the N2H2 package blocked 915 of the 6775 sites as "Sex", about 13.5% of the total list.

I used SPSS to draw a simple random sample of 859 of the sites. After drawing a potential sample, I calculated the frequencies of each category for the sample and compared them to that of the population, trying to get a sample that closely mirrored the population in as many ways as possible. In the sample, 14.3% of the sites were blocked by N2H2 as "Pornography", and in each case, the sample and population proportions differed by no more than 1%.

To assist in the evaluation of this sample, I recruited, via electronic mail, a number of current and former students at the Information School of the University of Washington. I asked for people with experience, coursework, or background in collection development. A total of 16 people responded and were able to assist; I divided this group into two parts. Those with less direct experience (a group of 11) would evaluate the entire list to identify the most obviously overblocked sites; the second group, those with much more experience in school or public library collection development and reference work, would review the remaining sites to make final decisions.

In the first round, each person evaluated two groups of about 80 sites, and each group of sites was evaluated by two different people. Each group of sites included the following instructions:

> Look carefully at each of the Web sites on the list. Please make a notation of any site that appears to meet **any** of the following criteria:
>
> a. Contains information similar to that already found in libraries,

> **or**
>
> b. Contains information a librarian would want in the library if s/he had unlimited funds to purchase information and unlimited shelf space,
>
> **or**
>
> c. You would be willing to refer a patron (of any age) to the site if the patron appeared at a reference desk seeking information about the subject of the site. For this last criterion, we recognize that you might not refer a young child to a Calculus site just because it would not be useful to that child, but you should ignore that factor. Informational sites, such as a Calculus site should be noted. A site that is purely erotica should not be noted.
>
> Enter "Yes" in the right-hand column for any site that meets **any** of the above criteria, in your judgment. Enter "No" for any site that meets **none** of these criteria.

The final sentence in c) above was intended to indicate that erotica sites should be voted "No"; this point was clarified for second-round judges.

Sites that received "Yes" votes from both judges were determined to be of sufficient interest in a library context and removed from further analysis. Sites receiving one or two "No" votes would go to the next round. Requiring two "Yes" votes at this stage is a high standard and raises confidence in these judgments. All judges worked independently and were instructed not to discuss their work with anyone else until all decisions had been made.

One participant in this round was unable to complete his assignment. I decided to exclude the two groups of

sites he was to evaluate from further analysis. Since groups of sites were randomly assigned to judges, and the sites were ordered alphabetically, it is unlikely that these two groups of sites differed significantly from the rest of the sample. Excluding these sites leaves a sample size of 699, and this widens the confidence interval for results to ±2.8%. Analysis of the blocking categories of the 160 omitted sites reveals slightly higher proportions for some categories, and slightly lower proportions for others (the N2H2 "Sex" category was 11.3% of these sites), so they do not appear to be significantly different from the sample or population.

III. Results

In the first round of analysis, 243 sites (34.8% of the sample) received "Yes" votes from both judges (See Exhibit 3); 456 sites (65.2%) received one or more "No" votes or could not be found and were therefore sent forward to the second round of judging. See Exhibit 4.

Some of the judges in the first round had difficulty in deciding what to do with sites that seemed to have a primarily commercial purpose and in most cases voted them as "No". For the second round of judging, we added a sentence to the judges' instructions; since most libraries include in their collections the Yellow Pages and other guides or directories of commercial enterprises, and since one could easily imagine people wishing to do research on, say, the ways in which people are selling products or services or otherwise conducting business on the Internet, we instructed judges to vote "Yes" on such sites. The new instructions read:

> Look carefully at each of the Web sites on the list. Please make a notation of any site that appears to meet **any** of the following criteria:

> a. Contains information similar to that already found in libraries,
>
> **or**
>
> b. Contains information a librarian would want in the library if s/he had unlimited funds to purchase information and unlimited shelf space,
>
> **or**
>
> c. You would be willing to refer a patron (of any age) to the site if the patron appeared at a reference desk seeking information about the subject of the site. For this last criterion, we recognize that you might not refer a young child to a Calculus site just because it would not be useful to that child, but you should ignore that factor. Informational sites, such as a Calculus site should be noted. Sites that have a commercial purpose should be included here if they might be of use or interest to someone wishing to buy the product or service or doing research on commercial behavior on the Internet, much as most libraries include the Yellow Pages in their collections. A site that is purely erotica should not be noted.
>
> Enter "Yes" in the right-hand column for any site that meets **any** of the above criteria, in your judgment. Enter "No" for any site that meets **none** of these criteria

This second round of judging produced the following results: 60 sites could not be found (due to broken links, 404 not found errors, domain for sale messages, etc.), 231 sites were judged "Yes", and 165 judged "No". (One site, http://www.WFTurfClub.com, was inadver-

tently not evaluated by the judge; I looked at it and judged it "Yes".) See Exhibit 5.

Second-round judges had substantially more experience in library reference and collection development work, and so I felt it reasonable to rely on their judgments.

IV. Conclusions

Overall, then, 165 of the 699 sites evaluated were found not to be of any value or use in a library context, 23.6% of the total. 60, or 8.6% could not be found, and therefore 474 of the sites, or 67.8% are examples of overblocking on the part of these blocking packages. We then can be 95% confident that the actual proportion of overblocked sites in the population of 6775 sites is between 65.0% and 70.6%.

Based on this analysis, I conclude that the blocking programs tested block a significant amount of content that would be appropriate in a library setting.

Dated: October 15, 2001

Signed_____
Joseph Janes

[P. Ex. 110-119]

Exhibits 110-119 are web page screen shots that have been omitted and will be submitted in a separate lodging.

[P. Ex. 122-123]

Exhibits 122-123 are CD-ROMs that have been omitted and will be submitted in a separate lodging.

[P. Ex. 128-135, 162 A-K, 165-169]

Exhibits 128-135, 162 A-K, and 165-169 are web page screen shots that have been omitted and will be submitted in a separate lodging.